# TEXAS REGISTER

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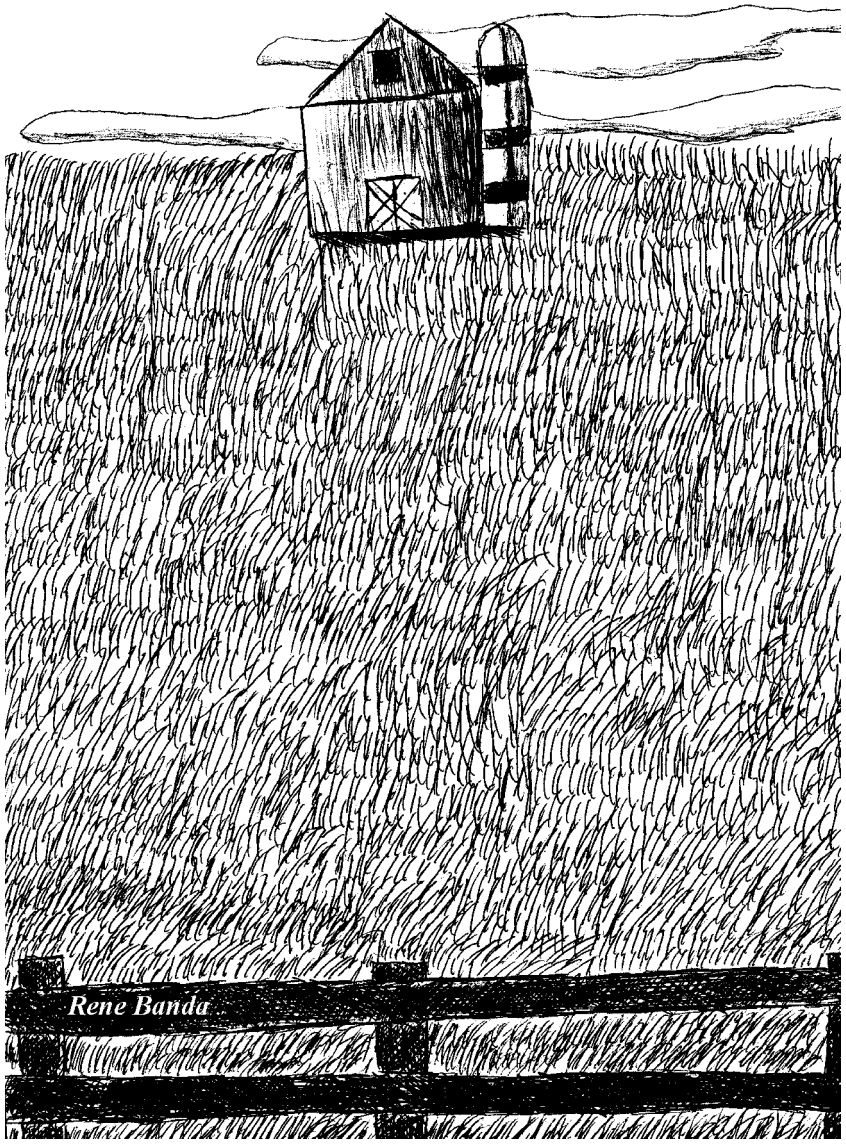

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Austin, TX 78711-3824
(800) 226-7199
(512) 463-5561
FAX (512) 463-5569
http://www.sos.state.tx.us
subadmin@sos.state.tx.us

# IN THIS ISSUE

**San Antonio-Bexar County Metropolitan Planning Organization**



**Texas Department of Transportation**



**Texas Workers' Compensation Commission**

# 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

*(Editor's note: In the October 22, 2004, issue of the Texas Register (29 TexReg 9747) the summary for Opinion No. GA-0258 appeared truncated. The two words that were missing from the end of the sentence were health certificate. The entire text is being published for clarification.)*

**Opinion No. GA-0258**

Mr. Glenn Parker

Executive Director

State Board of Barber Examiners

5717 Balcones Drive, Suite 217

Austin, Texas 78731

Re: Whether the State Board of Barber Examiners may participate in the TexasOnline occupational licensing system established in Government Code section 2054.353 in light of the requirement that an applicant for an original or a renewal barber or manicurist license present a health certificate from a physician under sections 1601.264 and 1601.402(d) of the Occupations Code (RQ-0216-GA)

**S U M M A R Y**

Section 2054.352 of the Government Code requires that the State Board of Barber Examiners participate in the electronic occupational licensing system established in connection with the TexasOnline Authority. That mandate does not irreconcilably conflict with the requirement that the State Board of Barber Examiners may not issue a new or renewal license or certificate until the applicant presents an appropriate health certificate.

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

TRD-200406778
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: November 10, 2004

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**Opinion No. GA-0265**

The Honorable Todd Staples

Chair, Infrastructure Development and Security Committee

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether the Gun Barrel City Economic Development Corporation may fund the construction of a youth football field (RQ-0221-GA)

**S U M M A R Y**

Consistent with the election proposition approved by the voters in 1997, the sales taxes collected in Gun Barrel City under section 4B of the Development Corporation Act of 1979 may be used to fund facilities for amateur sports, including children's sports, athletic, and public park purposes. The legislature has determined that section 4B(a)(2)(A) projects accomplish public purposes relating to economic development and the board of an economic development corporation is not required to make this finding for individual projects within this provision. Attorney General Opinion JC-0494 (2002), which was based on incorrect facts, is overruled to the extent it is inconsistent with this opinion.

**Opinion No. GA-0266**

Mr. Larry A. Olson

Executive Director

Department of Information Resources

Post Office Box 13564

Austin, Texas 78711-3564

Re: Whether an agency may return information submitted by a business entity in response to an agency request for offer, which was subsequently cancelled (RQ-0226-GA)

**S U M M A R Y**

A state agency must retain information submitted by a business entity in response to a request for offer, which the agency subsequently cancelled, for the period specified in the agency's record retention schedule created under chapter 441 of the Government Code. The information may not be returned to the business entity that submitted it within the time period that the information is to be retained. The information also is subject to the Public Information Act, chapter 552 of the Government Code, and is available to the public unless chapter 552 excepts the information from disclosure.

**Opinion No. GA-0267**

The Honorable Helen Giddings

Chair, Committee on Business and Industry

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether, under section 54.012(5) of the Local Government Code, a municipality may enact an ordinance prescribing civil penalties for matters that do not relate to the substantive provisions of section 54.012 (RQ-0220-GA)

**S U M M A R Y**

An ordinance enacted under section 54.012(5) of the Local Government Code must be statutorily classified as a class C misdemeanor and must, in addition, be encompassed within the subject matter of subchapter B.

**Opinion No. GA-0268**

The Honorable Rodney Ellis

Chair, Committee on Government Organization

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Whether municipal management districts have eminent domain powers (RQ-0228-GA)

**S U M M A R Y**

A municipal management district created under chapter 375 of the Local Government Code has no power of eminent domain. A municipal management district created under chapter 376 has eminent domain power only if the power is conferred expressly or implicitly. Those districts whose enabling statutes expressly withhold eminent domain power do not have such power. The Harris County Improvement District No. 3 does not have eminent domain power. The enabling statute of any other municipal management district must be analyzed to consider whether the statute confers expressly or implicitly the power of eminent domain. A municipal management district with the power of eminent domain may use the power to acquire property for a use consistent with the district's legitimate purposes even if exercise of the eminent domain power may interfere with a transaction between private parties. Whether property is being condemned, in any particular circumstance, for a legitimate purpose of the condemning municipal management district is a question of fact.

**Opinion No. GA-0269**

The Honorable Stephen E. Ogden

Chair, Senate Finance Committee

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Whether home-rule city charter provisions governing the frequency of elections apply to elections implementing a tax freeze under article VIII, section1-b(h) of the Texas Constitution (RQ-0242-GA)

**S U M M A R Y**

Home-rule municipality charter provisions limiting special elections on voter-initiated ordinances to once every six months and prohibiting an election on an initiated ordinance for two years after an ordinance on the same subject has been defeated may apply to an election called pursuant to a voter petition under article VIII, section 1-b(h) of the Texas Constitution.

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

TRD-200406751
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: November 9, 2004

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# TEXAS ETHICS COMMISSION

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

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

## Advisory Opinion Request

**AOR-519.** The Texas Ethics Commission has been asked to consider whether a home-rule city may adopt an ordinance that requires city candidates and officeholders to transmit reports electronically rather than on paper.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 36, Penal Code; and (8) Chapter 39, Penal Code.

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

TRD-200406604
Sarah Woelk
General Counsel
Texas Ethics Commission
Filed: November 4, 2004

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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 1. ADMINISTRATION

## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 355. REIMBURSEMENT RATES

### SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

**1 TAC §355.312**

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.312, concerning reimbursement setting methodology--liability insurance costs, in its Medicaid Reimbursement Rates chapter.

Background and Justification

The purpose of the amendment is to identify the requirements that nursing facilities with independently procured insurance and captive insurance must follow to provide proof of payment of taxes before the liability insurance add-on payment is made and to outline the actions that HHSC will take if proof of payment is not received. In addition, the amendment specifies who must sign the affidavit for independently procured insurance and captive insurance. The amendment also updates terminology and clarifies the section.

Fiscal Note

Tom Suehs, Deputy Commissioner for Financial Services, has determined that during the first five-year period the proposed rule is in effect there will be no fiscal impact to state government. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro businesses to comply with the proposal because the amendment does not add any requirements for nursing facilities. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Public Benefit

Ed White, Director, Rate Setting and Forecasting, 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 is that nursing facilities can begin to receive the liability insurance add-on rate at the beginning of the insurance policy period. Nursing facilities will also be able to provide evidence of payment of taxes after the deadline established by the Texas Comptroller, rather than at the beginning of the policy period before the add-on payment is paid. The amendment will thus increase the financial flexibility available to contracted providers, allowing them to pay the applicable taxes when most advantageous to the nursing facility.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environment exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environment exposure.

Takings Impact Assessment

Under Government Code §2007.003(b), HHSC has determined that Chapter 2007 of the Government Code does not apply to this rule. The changes this rule makes do not implicate a recognized interest in private rule property. Accordingly, HHSC is not required to complete a takings assessment regarding this rule.

Public Comment

Written comments on the proposal may be submitted to Lesa Ledbetter, at H-600, 1100 W. 49th St., Austin, TX 78756, by fax to (512) 491-1953, or by e-mail to lesa.ledbetter@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendment is proposed 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.

The proposed amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

*§355.312. Reimbursement Setting Methodology--Liability Insurance Costs.*

(a) Definitions.

(1) Purchased commercial liability insurance--Either general or professional liability insurance from a commercial carrier or a

non-profit service corporation in an arm's-length transaction that provides for the shifting of risk to the unrelated party. The commercial carrier or non-profit service corporation must meet the requirements as set by the Texas Department of Insurance (TDI) for authorized insurance.

(2) Self-insurance--Self-insurance is a means whereby a contracted provider undertakes the risk to protect itself against anticipated liabilities by providing funds equivalent to liquidate those liabilities. If a contracted provider enters into an arrangement with an unrelated party that does not provide for the shifting of risk to the unrelated party, such an agreement shall be considered self-insurance. Self-insurance is not purchased liability insurance.

(3) Independently procured insurance--an insurance transaction involving an insurance contract independently procured from an insurance company not licensed in Texas through negotiations occurring entirely outside the state of Texas that is reported and on which premium tax is paid.

(4) Purchased captive insurance--A company providing either general or professional liability insurance purchased from a nonadmitted captive insurance company that insures solely directors and officer's liability insurance for the directors and officers of the company's parent and affiliated companies and/or the risks of the company's parent and affiliated companies.

(b) Payment rates for purchased general and professional liability insurance will be determined as follows:

(1) Determine the portion of the general/administration rate component from 1 TAC §355.307 (relating to Reimbursement Setting Methodology) attributable to allowable liability insurance costs.

(2) Determine the amount of total dollars that would be expended if the liability rate component from paragraph (1) of this subsection were paid uniformly to all providers during the rate effective period.

(3) Estimate the number of days of service that will be covered by purchased liability insurance during the rate period.

(4) Divide the total dollars available for liability insurance from paragraph (2) of this subsection by the estimated number of days of service that will be covered by purchased liability insurance during the rate period from paragraph (3) of this subsection. Estimate the proportion of this per diem amount accruing from general liability insurance and the proportion accruing from professional liability insurance to determine the payment rate for each day of purchased general liability insurance and the payment rate for each day of purchased professional liability insurance.

(5) Payment rates for purchased general and professional liability insurance may be adjusted as often as HHSC determines is necessary to ensure that the total dollars expended during the rate period do not exceed the amount appropriated for this purpose.

(6) Since these payment rates are determined through an allocation of available appropriations among estimated units of service covered by purchased liability insurance, a public rate hearing is not required when adjustments are made to the payment rates.

(7) Contracted providers [~~Providers~~] will be notified, in a manner determined by HHSC, of adjustments to the payment rates for purchased general and professional liability insurance.

(8) Contracted providers [~~Providers~~] who purchase general liability insurance without professional liability insurance are only eligible to receive payment of the rate for purchased general liability insurance. Contracted providers [~~Providers~~] who purchase professional liability insurance without general liability insurance are only eligible to receive payment of the rate for purchased professional liability insurance. Contracted providers [~~Providers~~] who purchase both general and professional liability insurance are eligible to receive payment of both rates.

(c) Purchased liability insurance issued through entities meeting any one of the following criteria will be determined automatically to qualify for the payment rates for purchased general and/or professional liability insurance as appropriate. These entities have been determined by the TDI to be authorized to issue liability insurance policies in the State of Texas.

(1) An insurance company identified as an admitted, licensed, insurer authorized to write liability insurance in Texas. This type of insurance company is designated as "active" on the TDI website.

(2) An insurance company that is an eligible surplus lines insurer which requires that there be a Texas licensed surplus lines agent placing the coverage with the insurance company. This type of insurance company is designated as "eligible" on the TDI website.

(3) The Texas Medical Liability Insurance Underwriting Association (JUA). This insurance arrangement is designated as "active" on the TDI website.

(4) A risk retention group that is registered with the TDI and which is designated as "registered" on the TDI website.

(d) Independently procured insurance will not be determined automatically to qualify for the payment rates for purchased general and/or professional liability insurance. To qualify for the purchased general and/or professional liability insurance payment rates, the coverage must have been purchased through an independently procured insurance arrangement. The liability insurance payment rates will not be paid to any nursing facility contracted provider until HHSC Rate Analysis has received from the contracted provider a signed and notarized [~~certified~~] affidavit in the form provided by HHSC regarding the circumstances of the solicitation and procurement of coverage [~~and evidence that independently procured taxes were paid to the Texas Comptroller~~]. An authorized signatory for the contracted provider as per the Department of Aging and Disability Services (DADS) Form 2031 must sign the affidavit. HHSC may request additional information to support the contents of the affidavit. The affidavit and supporting information will be reviewed by HHSC to determine if the information supplied is correct and complete to authorize payment of rates for purchased general and/or professional liability insurance. [~~If, by October 1, 2003, HHSC has not received the affidavit and evidence that independently procured taxes were paid to the Texas Comptroller, HHSC will stop payment of the liability insurance payment rates until HHSC Rate Analysis receives and reviews the required information.~~] Upon receipt and review of the affidavit and supporting information and a determination that the information is correct and complete to authorize payments, payments will be made as identified in subsection (h) of this section [~~retroactively to the effective date of the insurance policy or the date the liability insurance rates were stopped, whichever is later~~]. HHSC may refer any questionable case to the TDI to determine if a violation of the Texas Insurance Code has occurred. The liability insurance payment rates will continue to be paid if evidence that taxes on the premiums of independently procured insurance were paid to and received by the Texas Comptroller for the calendar year in which the policy is procured, continued or renewed. Evidence of the annual taxes

paid to and received by the Texas Comptroller for the independently procured insurance in which the policy has been procured, continued or renewed must be received by HHSC Rate Analysis no later than the end of the business day on June 15 following the applicable calendar year. Failure to provide HHSC by June 15 with evidence that premium taxes have been paid will result in the discontinuation of the liability insurance rate add-on. If June 15 falls on a weekend, a national holiday, or a state holiday, then the first business day following June 15 of that year is the due date for the evidence of taxes paid. If acceptable evidence that taxes have been paid has not been received by HHSC within 60 days after the June 15 deadline, HHSC will recoup any add-on payments made to the contracted provider for the period in which taxes are unpaid. Once HHSC Rate Analysis receives evidence of taxes paid to the Texas Comptroller, HHSC will restore any add-on payments for that period previously withheld or recouped. Any vendor hold placed under 40 TAC §19.2308 (relating to Change of Ownership) will remain in place until evidence that all taxes on the premiums are paid to and received by the Texas Comptroller for all time periods for which the liability insurance add-on rate was paid to the contracted provider.

(e) Insurance purchased through a captive insurance company will not be determined automatically to qualify for the payment rates for purchased general and/or professional liability insurance. The liability insurance payment rates will not be paid to any nursing facility contracted provider until HHSC Rate Analysis has received from the contracted provider a signed and notarized [~~certified~~] affidavit in the form provided by HHSC and any requested supporting information regarding the financial arrangements and affiliation between the contracted provider and the captive insurance company. An authorized signatory for the contracted provider as per DADS Form 2031 must sign the affidavit. HHSC may request additional information to support the contents of the affidavit. The affidavit and supporting information will be reviewed by HHSC to determine if the information supplied is correct and complete to authorize payment of rates for purchased general and/or professional liability insurance. Payments will be made as identified in subsection (h) of this section. Insurance purchased through an "active" or "eligible" insurance company will automatically qualify for the payment rate for purchased general and [~~an~~]/or professional liability insurance, regardless of whether such risk has been reinsured by a captive insurance company. It is the responsibility of the nursing facility to obtain any requested information from the captive insurance company or affiliates. HHSC may refer any questionable cases to TDI to determine if a violation of the Texas Insurance Code has occurred. The liability insurance payment rates will continue to be paid if evidence that taxes on the premiums of captive insurance were paid to and received by the Texas Comptroller for the calendar year in which the policy is procured, continued or renewed. Evidence of the annual taxes paid to and received by the Texas Comptroller for the captive insurance in which the policy has been procured, continued or renewed must be received by HHSC Rate Analysis no later than the end of the business day on April 1 following the applicable calendar year. Failure to provide HHSC by June 15 with evidence that premium taxes paid have been will result in the discontinuation of the liability insurance rate add-on. If April 1 falls on a weekend, a national holiday, or a state holiday, then the first business day following April 1 of that year is the due date for the evidence of taxes paid. If acceptable evidence that taxes have been paid has not been received by HHSC within 60 days after the April 1 deadline, HHSC will recoup any add-on payments made to the contracted provider for the period in which taxes are unpaid. Once HHSC Rate Analysis receives evidence of taxes paid to the Texas Comptroller, HHSC will restore any add-on payments for that period previously withheld or recouped. Any vendor hold placed under 40 TAC §19.2308 (relating to Change of Ownership) will remain in place until evidence that all taxes on the premiums are paid to and received by the Texas Comptroller for all time periods for which the liability insurance add-on rate was paid to the contracted provider.

(f) Liability insurance payments will not be made to facilities that obtain insurance from an insurer or person engaged in unauthorized insurance as set forth in Chapter 101 of the Texas Insurance Code, Unauthorized Insurance. It is the responsibility of the nursing facility contracted provider to ensure that liability insurance submitted for payment is authorized. Liability insurance payments made on insurance that is later determined by the Texas Department of Insurance to be unauthorized insurance under Chapter 101, Texas Insurance Code will be recouped [~~unauthorized insurance. It is the responsibility of the nursing facility provider to ensure that liability insurance submitted for payment is authorized. Liability insurance payments made on insurance that is later determined to be unauthorized insurance will be recouped~~].

(g) To qualify for the purchased liability insurance payment rates each contracted entity must submit the following to HHSC Rate Analysis:

(1) A completed liability insurance coverage certification form provided by HHSC Rate Analysis, signed by an authorized signatory for the contracted provider as per DADS [~~Texas Department of Human Services~~] Form 2031.

(2) A copy of evidence of coverage to include a certificate of insurance, the ACORD 25-S or similar document provided by the insurance company or agent that includes the type of coverage, effective and expiration dates of coverage, insurer, policy, and form number of policy contract, agent/producer, and claims made/occurrences. For catastrophic or excess liability coverage, the evidence of coverage must also include the sum that the catastrophic or excess coverage must exceed to become payable. A binder is not acceptable as evidence of insurance.

(3) For independently procured liability insurance, the information identified in subsection (d) of this section.

(4) For insurance purchased through a captive insurance company, the information identified in subsection (e) of this section.

(h) If an insurance policy effective date is not the first day of the month, then the liability insurance payment rates will become effective the first day of the following month. If an insurance policy expiration date is not the last day of the month, then the liability insurance payment rates will be paid for the full month that includes the expiration date.

(i) It is the contracted provider's responsibility to notify HHSC Rate Analysis of any changes to liability insurance coverage including cancellation of coverage, change of insurance and renewal of coverage within 15 calendar days of the effective date of the change. Failure to notify HHSC Rate Analysis of cancellation of coverage or change of insurance could constitute Medicaid fraud. Renewals of coverage not received within 15 calendar days of the effective date of the renewal could result in the liability insurance payment rates being stopped until documentation of the renewal per subsection (f) of this section is received by HHSC Rate Analysis.

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 November 8, 2004.

TRD-200406691

Steve Aragón
General Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: December 19, 2004
For further information, please call: (512) 424-6576

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# TITLE 19. EDUCATION

## PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

### CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

### SUBCHAPTER A. GENERAL PROVISIONS

**19 TAC §4.7**

The Texas Higher Education Coordinating Board proposes amendments to §4.7(b), concerning changing references from former Texas Academic Skills Program to Texas Success Initiative. Specifically, the amendments remove from Board rules all references to the former Texas Academic Skills Program (TASP) and replaces them with references to the current Texas Success Initiative.

Dr. Marshall A. Hill, Assistant Commissioner for Universities and Health-Related Institutions, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Hill has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering these sections will be the improved organization and clarity of rules affecting public institutions of higher education. There is no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed rules may be submitted to Marshall A. Hill, Ph.D., Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711-2788, or by e-mail to Marshall.Hill@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposed rules in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §61.027, which provides the Coordinating Board with general rule-making authority; §61.002, which establishes the Coordinating Board as an agency charged to provide leadership and coordination for the Texas higher education system; §61.051, which provides the Coordinating Board with authority to coordinate institutions of public higher education in promoting quality education; and §61.0651, which charges the Board to adopt and recommend management policies applicable to institutions of higher education in relation to management of human resources and physical plants.

The amendments affect Texas Education Code, §61.002; TEC, §61.051; and TEC, §61.0651.

*§4.7. Student Transcripts.*

(a) (No change.)

(b) The [~~After September 1, 1998, the~~] student transcript or an addendum to the transcript certified by the appropriate institutional official shall contain a record of the student's status in regard to the Texas Success Initiative (TSI) [~~Texas Academic Skills Program (TASP)~~]. The [~~Depending on the status of the individual student, the~~] document should include the status for each section of a [~~the~~] test taken for TSI purposes (reading, mathematics, writing) with information as to how the student met the TSI [~~TASP~~] requirement [~~(TASP test or other test scores, "B" or better courses with grades and course numbers)~~]. The information provided should enable receiving institutions to use the transcript or the addendum as a single source of information to determine the student's TSI [~~TASP~~] status.

(c) - (d) (No change.)

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

Filed with the Office of the Secretary of State on November 3, 2004.

TRD-200406582
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 27, 2005
For further information, please call: (512) 427-6114

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### CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES AND/OR HEALTH-RELATED INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

### SUBCHAPTER C. APPROVAL OF NEW ACADEMIC PROGRAMS AND ADMINISTRATIVE CHANGES AT PUBLIC UNIVERSITIES AND/OR HEALTH-RELATED INSTITUTIONS

**19 TAC §5.45, §5.46**

The Texas Higher Education Coordinating Board proposes amendments to §5.45(3) and §5.46(5), concerning the academic qualifications of faculty in Texas institutions of higher education in regard to requests for new degree programs. Specifically, these amendments would establish criteria for evaluating faculty credentials in regard to determining faculty members' contributions to proposed degree programs.

Dr. Marshall A. Hill, Assistant Commissioner for Universities and Health-Related Institutions, has determined that for each year of the first five years the amendments are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Hill has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering these amendments will be the improved organization and clarity of rules affecting public institutions of higher education. There is no effect on small businesses.

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed rules may be submitted to Marshall A. Hill, Ph.D., Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711-2788, or by e-mail to Marshall.Hill@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposed rules in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §61.027, which provides the Board with general rule-making authority; §61.002, which establishes the Board as an agency charged to provide leadership and coordination for the Texas higher education system; §61.051, which provides the Board with authority to coordinate institutions of public higher education in promoting quality education; Texas Education Code, §51.807, which provides the Board with the authority to adopt rules relating the Uniform Admissions; Texas Education Code, §51.762(a), which provides the Board with the authority to implement the Common Admission Application, Texas Education Code, §61.074, which provides the Board with the authority to adopt rules relating to grade-point calculation, Texas Education Code, §§61.051(d) and (e), which directs the Board to develop the role and mission of each institution and periodically review the role and mission statements, Tables of Programs, and all certificate and degree programs, Texas Education Code, §61.051(j), which requires the approval of the Board for operation of off-campus educational units, and Texas Education Code, §61.055, which requires a Board finding that a new department, school, or degree or certificate program is adequately financed.

The amendments affect Texas Education Code, §§61.002, 61.002, 61.051, 51.807, 51.762(a), 61.074, 61.051(d) and (e), 61.051(j), and 61.055.

*§5.45. Criteria for New Baccalaureate and Master's Degree Programs.*

New baccalaureate and master's degree programs must meet all of the following criteria:

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

(3) Faculty resources.

(A) Faculty resources must be adequate to provide high program quality. With few exceptions, the master's degree should be the minimum educational attainment for faculty teaching in baccalaureate programs. In most disciplines, the doctorate should be the minimum educational attainment for faculty teaching in graduate programs. Faculty should meet the qualitative and quantitative criteria of the Southern Association of Colleges and Schools, and the appropriate accrediting body, if a professional program. There should be sufficient numbers of qualified faculty dedicated to a new program. This number shall vary depending on the discipline, the nature of the program, and the anticipated number of students.

(B) In evaluating faculty resources for proposed degree programs, the Board shall consider only those degrees held by faculty that were issued by:

*(i)* United States institutions accredited by accrediting agencies recognized by the Board or,

*(ii)* institutions located outside the United States that have demonstrated that their degrees are equivalent to degrees issued from an institution in the United States accredited by accrediting agencies recognized by the Board. The procedures for establishing that equivalency shall be consistent with the guidelines of the National Council on the Evaluation of Foreign Education Credentials, or its successor.

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

*§5.46. Criteria for New Doctoral Programs.*

New doctoral programs must meet all of the following criteria:

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

(5) Faculty Resources.

(A) There must be a strong core of doctoral faculty, at least four or five, holding the doctor of philosophy degree or its equivalent from a variety of graduate schools of recognized reputation. Professors and associate professors must be mature persons who have achieved national or regional professional recognition. All core faculty must be currently engaged in productive research, and preferably have published the results of such research in the main professional journals of their discipline. They should come from a variety of academic backgrounds and have complementary areas of specialization within their field. Some should have experience directing doctoral dissertations. Collectively, the core of doctoral faculty should guarantee a high quality doctoral program with the potential to attain national prominence. The core faculty members should already be in the employ of the institution. Proposed recruitment of such faculty shall not meet this criterion. No authorized doctoral program shall be initiated until qualified faculty are active members of the department through which the program is offered.

(B) In evaluating faculty resources for proposed degree programs, the Board shall consider only those degrees held by the faculty that were issued by:

*(i)* United States institutions accredited by accrediting agencies recognized by the Board or,

*(ii)* institutions located outside the United States that have demonstrated that their degrees are equivalent to degrees issued from an institution in the United States accredited by accrediting agencies recognized by the Board. The procedures for establishing that equivalency shall be consistent with the guidelines of the National Council on the Evaluation of Foreign Education Credentials, or its successor.

(6) - (14) (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 November 3, 2004.

TRD-200406583
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 27, 2005
For further information, please call: (512) 427-6114

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## CHAPTER 7. PRIVATE AND OUT-OF-STATE PUBLIC POSTSECONDARY EDUCATIONAL INSTITUTIONS OPERATING IN TEXAS

## SUBCHAPTER A. GENERAL PROVISIONS

**19 TAC §7.4**

The Texas Higher Education Coordinating Board proposes amendments to §7.4, concerning accrediting agencies which exempt institutions from Board oversight. Specifically, the first amendment to §7.4 will list the new names of two accrediting agencies recognized by the Board for purposes of exemption from the statute and will clarify that one accrediting association is recognized by the Board only at the undergraduate level and not the graduate level.

Dr. Marshall A. Hill, Assistant Commissioner for Universities and Health-Related Institutions, has determined that for each year of the first five years the amendments are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Hill has also determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of administering this amendment will be the improved organization and clarity of rules affecting private and out-of-state institutions offering baccalaureate, graduate or professional degrees in Texas. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed rules may be submitted to Marshall A. Hill, Ph.D., Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711-2788, or by e-mail to Marshall.Hill@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposed rules in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §61.027, which provides the Board with general rule-making authority; Texas Education Code, §61.002, which establishes the Board as an agency charged to provide leadership and coordination for the Texas higher education system; Texas Education Code, §§61.301 - 61.319, concerning regulation of private postsecondary education institutions; §61.311, which provides the Board with the authority to promulgate rules governing certificates of authority; Texas Education Code, §§61.401 - 405, regarding regulation of public institutions of higher education established outside the boundaries of the State of Texas; and Texas Education Code, §61.403 which provides the Board with the authority to promulgate rules regarding out of state public institutions.

The amendments affect Texas Education Code, §§61.301 - 61.319, and Texas Education Code, §§61.401 - 61.405.

*§7.4. Exemptions, Revocation of Exemptions, and Certificates of Authorization.*

(a) The provisions of this subchapter do not apply to:

(1) The home campus of an institution which is fully accredited by a recognized accrediting agency. For purposes of the exemption, the Board currently recognizes the following accrediting agencies: the Commission on Higher Education, Middle States Association of Colleges and Schools; the Commission on Institutions of Higher Education, New England Association of Schools and Colleges; the Commission on Institutions of Higher Education, North Central Association of Colleges and Schools; the Northwest Commission on Colleges and Universities, [~~the Commission on Colleges, Northwest Association of Schools and Colleges~~]; the Commission on Colleges, Southern Association of Colleges and Schools; the Accrediting Commission for Community and Junior Colleges and Accrediting Commission for Senior Colleges and Universities, Western Association of Schools and Colleges; the Association of Biblical Higher Education (undergraduate only) [~~the Accrediting Association of Bible Colleges~~]; and the Association of Theological Schools in the United States and Canada.

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

(b) - (f) (No change.)

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

Filed with the Office of the Secretary of State on November 3, 2004.

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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 27, 2005
For further information, please call: (512) 427-6114

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## CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS
## SUBCHAPTER F. PROVISIONS FOR THE SCHOLARSHIP PROGRAMS FOR VOCATIONAL NURSING STUDENTS

**19 TAC §22.112**

The Texas Higher Education Coordinating Board proposes an amendment to §22.112 concerning the Provisions for the Scholarship Programs for Vocational Nursing Students. Specifically, on February 1, 2004, the Board of Vocational Nurse Examiners, which regulated the practice of licensed vocational nurses in Texas, ceased to exist as a separate agency. Licensed vocational nurses are now under the Board of Nurse Examiners. The proposed amendment would reflect the change and would eliminate any confusion regarding the licensing agency for vocational nurses.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to the state. There will be no fiscal implications to local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be that the correct name of the licensing agency for vocational nurses will be properly stated in Board rules. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P. O. Box 12788, Austin, Texas 78711, 512-427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §61.652, which states that the Coordinating Board shall establish and administer a scholarship program for vocational nursing students.

The amendments affect Texas Education Code, §§61.651, 65.652, and 61.655 - 61.658.

*§22.112. Advisory Committee.*

(a) The Board shall appoint an advisory committee to advise the Board concerning assistance provided under this subchapter to vocational nursing students.

(1) The advisory committee shall consist of:

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

(D) one representative named by the Board of [~~Vocational~~] Nurse Examiners of the State of Texas,

(E) - (G) (No change.)

(2) (No change.)

(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 November 8, 2004.

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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 27, 2005
For further information, please call: (512) 427-6127

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# TITLE 22. EXAMINING BOARDS

## PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

### CHAPTER 1. ARCHITECTS

### SUBCHAPTER C. EXAMINATION

**22 TAC §1.43**

The Texas Board of Architectural Examiners proposes an amendment to §1.43 for Title 22, Chapter 1, Subchapter C, pertaining to examinations. The reason for the amendment to this rule is to simplify it and make it less stringent upon candidates seeking registration. The amendment would allow registration candidates to maintain credit for passing a section of the registration examination for five years after passing it.

Pursuant to the rule as amended, a person who passes a section of the registration examination would be required to pass the remaining sections of the examination within five years in order to be registered. A person who fails to pass the remaining sections of the examination within that period would forfeit credit for the section of examination passed and would have to pass that section again in order to be registered. Under the rule as it currently exists, a person must pass the examination within five years after she or he is approved by the Board for examination. Pursuant to the current rule, a person who does not pass all sections of the examination within five years after approval forfeits credit for all sections passed and must submit a new registration application for approval to take the entire examination again.

The amendment also modifies the current rule as it applies to persons who were approved to take the examination prior to January 1, 2002. As amended, the rule would retain the existing requirement that applicants approved before January 1, 2002, must pass all sections of the examination by December 31, 2006. However, failure to meet that deadline would result in the forfeiture of only those sections of the examination passed prior to January 1, 2002, not forfeiture of all sections passed, as currently required under the rule.

The amendment makes the rule less stringent in that the five-year period would commence at a later date - upon passage of a section of the examination in lieu of upon approval to take the examination. The consequences of failing to pass all sections of the examination within the five-year period would also be less severe. Failure to meet the deadline would result in the forfeiture of the credit for only those examination sections passed on or before the commencement of the five-year period. In addition, the amendment would repeal a provision requiring candidates to submit another registration application upon failing to meet the five-year deadline.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended section is in effect, there will be no fiscal impact on local government. There would be no direct fiscal impact on state government because fees paid to sit for sections of the examination are paid to the examination provider under contract with the Board. As amended, the rule would allow candidates to continue to sit for sections of the examination after failing to meet the five-year deadline. Under the current rule, those candidates will have to reapply for registration and gain approval from the Board to take the examination again. To the extent that candidates who would not reapply under the current rule may ultimately become registered under the rule as amended and thereafter pay registration fees to the Board, the amendment would have an indeterminable positive fiscal impact on state government.

Ms. Hendricks has also determined that for the first five-year period the amendment is in effect the public benefit expected is greater protection of the public health, safety, and welfare resulting from increased registration of qualified persons who will practice within the parameters of the rules and regulations of the Board. The rule will have no impact on small business. There will be a cost to persons who must sit for a section of the examination after forfeiting credit for that section. However, those persons face a greater cost under the existing rule which requires the forfeiture of all previously passed examination sections and requires them to reapply to sit for the examination. On balance, the rule as amended is less costly to persons required to comply with it.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment is proposed pursuant to Section 1051.202 of Tex. Occupations Code Annotated ch. 1051, which provides the Board with general authority to promulgate rules necessary to the administration of its statutory responsibilities. The amendment is also proposed pursuant to Section 1051.704(1) of Tex. Occupations Code Annotated ch. 1051, which requires

the Board to examine each applicant for registration on any architectural subject or procedure the Board requires.

The proposed amendment to this rule does not affect any other statutes.

*§1.43. Reexamination.*

(a) Effective January 1, 2002, a Candidate's passing grade for any section of the examination is valid for five (5) years. Each Candidate who, after December 31, 2001, is approved for examination by the Board must pass all sections of the examination within five (5) years after the date the Candidate passes a section of the examination [~~is approved for examination by the Board~~]. A Candidate approved for examination by the Board after December 31, 2001, who does not pass all sections of the examination within five (5) years after passing a section of the examination [~~approval~~] will forfeit credit for the [~~each~~] section of the examination passed and must pass that section of the [~~submit a new registration application in order to obtain approval to take the entire~~] examination again.

(b) Each Candidate approved for examination by the Board prior to January 1, 2002, must pass all sections of the examination no later than December 31, 2006. A Candidate approved for examination by the Board prior to January 1, 2002, who does not pass all sections of the examination by December 31, 2006, will forfeit credit for each section of the examination the candidate passed before January 1, 2002, and must pass each of those sections [~~and must submit a new registration application in order to obtain approval to take the entire examination~~] again. The Candidate's passing grade for any section of the examination taken after January 1, 2002, is valid for five (5) years.

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 November 4, 2004.

TRD-200406605
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: December 19, 2004
For further information, please call: (512) 305-8535

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## SUBCHAPTER L. HEARINGS--CONTESTED CASES

### 22 TAC §1.234

The Texas Board of Architectural Examiners proposes new §1.234 for Title 22, Chapter 1, Subchapter L, pertaining to the suspension of registration as a disciplinary action by the Board. The reason for the new rule is to provide guidance to the Board and to administrative law judges when considering whether the probation of a registrant's registration should be active or probated. The rule would also specify the possible terms and conditions upon practice that may be imposed as a part of probated suspension of registration. The rule would support the imposition of consistent disciplinary action upon registrants.

Under the rule, active suspension, prohibiting practice, would be imposed for violations that: caused a serious threat to the public health and safety, caused damage to property in excess of $1,000, resulted in a violation of the terms and conditions of a probated suspension, were committed by one with a significant sanction history, or would likely engage in a practice not in compliance with standards normally followed by reasonably prudent registrants.

Probated suspension of registration would be applicable to other less serious violations. The rule lists the following terms and conditions that may be imposed to restrict the practice of one whose registration is under a probated suspension: monitoring of practice by mandatory reporting or impromptu visits, directed continuing education, limitations on the scope of practice, required supervision and control of practice by another registrant, and successful completion of a rehabilitation program for the treatment of substance abuse.

The rule would also specify disciplinary action that may be taken against a person who practices with an actively suspended registration or who violates the terms and conditions of a probated suspension of registration. The disciplinary action that may be taken for such a violation is prolonged suspension, a more restricted probated suspension, an administrative penalty, or revocation.

As a result of this new rule, the Board and administrative law judges would have the guidelines to impose terms and conditions of the suspension of registration that is appropriate under the facts and circumstances of each case. The new rule would also support the imposition of the suspension of registration in a manner that is consistent in similar cases.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the new rule is in effect, there would be no fiscal impact on local government. Since the rule would provide guidelines to pre-existing statutory authority, there is no anticipated fiscal impact on state government.

Ms. Hendricks has also determined that for the first five-year period the new rule is in effect the public benefits expected as a result of the new rule are as follows: the rules would provide guidance in the imposition of disciplinary action by the Board. To the extent that the rule may provide notice to registrants on the possible disciplinary consequences for violations under certain circumstances, it may serve as a deterrent to conduct that poses a danger to the public. The rule will have no impact on small business. There would be no cost to persons subject to the rule which cost does not currently exist. The Board currently has the authority to suspend registration as a disciplinary action. The rule creates guidelines for imposing those pre-existing sanctions.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The new rule is proposed pursuant to Section 1051.202 of Tex. Occupations Code Annotated ch. 1051, which provides the Board with general authority to promulgate rules necessary to the administration of its statutory responsibilities. The new rule is also proposed pursuant to Section 1051.501 of Tex. Occupations Code Annotated ch. 1051 which grants the Board authority to take enforcement action against a person who violates the laws enforced by the Board. The new rule is also proposed pursuant to Section 1051.751 of Tex. Occupations Code Annotated ch. 1051, which authorizes the Board to suspend registration as a disciplinary action and specifies the terms and conditions that may be imposed upon a probated suspension.

The proposed new rule does not affect any other statutes.

*§1.234. Suspension of Registration.*

(a) If suspension of a person's registration is the appropriate sanction for a violation of a statutory provision or rule enforced by the Board, the Board and the administrative law judge shall apply the following guidelines to determine whether the suspension will be active or probated:

(1) The Board and the administrative law judge shall impose an active suspension upon a finding that the respondent:

(A) violated a statutory provision or rule enforced by the Board which caused a serious threat to the health or safety of the public;

(B) violated a statutory provision or rule enforced by the Board which caused economic damage to property in excess of $1,000;

(C) committed a violation of a statutory provision or rule enforced by the Board while the respondent's registration was on probated suspension;

(D) has a sanction history including at least two findings by the Board that the respondent engaged in conduct for which the respondent's registration could have been suspended or revoked pursuant to §1.232; or

(E) would likely engage in the practice of Architecture in a manner that does not comply with a standard or practice normally followed by a reasonably prudent Architect under the same or similar circumstances.

(2) In any case in which active suspension is not warranted, the suspension imposed by the Board shall be probated.

(b) A person whose registration is under active suspension may not engage in the Practice of Architecture. A person whose registration is under active suspension may not Supervise and Control or have Responsible Charge over the Practice of Architecture by another.

(c) The Board may impose any of the following terms and conditions upon the practice of a person whose registration is subject to a probated suspension:

(1) monitoring of practice, including mandatory submission of information to the Board and random and unannounced visits by personnel of the Board to investigate compliance with the terms of the probated suspension;

(2) directed continuing education on applicable subjects, including ethics training, in excess of the continuing education requirements applicable to all Registrants;

(3) limitations on scope of practice;

(4) mandatory Supervision and Control of practice by another registered Architect; and

(5) successful completion of a rehabilitation program pursuant to §1.150.

(d) If a person violates the terms of a probated suspension of registration, the Board may:

(1) prolong the period of probated suspension;

(2) impose an active suspension of registration; or

(3) impose additional terms and conditions upon the probated suspension.

(e) If a person engages in the Practice of Architecture while the person's registration is subject to an active suspension, the Board may impose any or all of the following:

(1) issue an order restraining any further practice by the person;

(2) impose an administrative penalty;

(3) impose an additional period of suspension; or

(4) revoke the person's certificate of registration.

(f) In addition to fulfilling the terms and conditions of a probated or active suspension of registration, a person must fulfill the requirements of §1.178 in order to obtain reinstatement of the person's suspended certificate of registration.

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 November 4, 2004.

TRD-200406606
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: December 19, 2004
For further information, please call: (512) 305-8535

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## CHAPTER 3. LANDSCAPE ARCHITECTS
## SUBCHAPTER C. EXAMINATION

**22 TAC §3.43**

The Texas Board of Architectural Examiners proposes an amendment to §3.43 for Title 22, Chapter 3, Subchapter C, pertaining to examinations. The reason for the amendment to this rule is to simplify it and make it less stringent upon candidates seeking registration. The amendment would allow registration candidates to maintain credit for passing a section of the registration examination for five years after passing it.

Pursuant to the rule as amended, a person who passes a section of the registration examination would be required to pass the remaining sections of the examination within five years in order to be registered. A person who fails to pass the remaining sections of the examination within that period would forfeit credit for the section of examination passed and would have to pass that section again in order to be registered. Under the rule as it currently exists, a person must pass the examination within five years after she or he is approved by the Board for examination. Pursuant to the current rule, a person who does not pass all sections of the examination within five years after approval forfeits credit for all sections passed and must submit a new registration application for approval to take the entire examination again.

The amendment also modifies the current rule as it applies to persons who were approved to take the examination prior to January 1, 2002. As amended, the rule would retain the existing requirement that applicants approved before January 1, 2002, must pass all sections of the examination by December 31, 2006. However, failure to meet that deadline would result in the forfeiture of only those sections of the examination passed prior to

January 1, 2002, not forfeiture of all sections passed, as currently required under the rule.

The amendment makes the rule less stringent in that the five-year period would commence at a later date - upon passage of a section of the examination in lieu of upon approval to take the examination. The consequences of failing to pass all sections of the examination within the five-year period would also be less severe. Failure to meet the deadline would result in the forfeiture of the credit for only those examination sections passed on or before the commencement of the five-year period. In addition, the amendment would repeal a provision requiring candidates to submit another registration application upon failing to meet the five-year deadline.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended section is in effect, there will be no fiscal impact on local government. There would be no direct fiscal impact on state government because fees paid to sit for sections of the examination are paid to the examination provider under contract with the Board. As amended, the rule would allow candidates to continue to sit for sections of the examination after failing to meet the five-year deadline. Under the current rule, those candidates will have to reapply for registration and gain approval from the Board to take the examination again. To the extent that candidates who would not reapply under the current rule may ultimately become registered under the rule as amended and thereafter pay registration fees to the Board, the amendment would have an indeterminable positive fiscal impact on state government.

Ms. Hendricks has also determined that for the first five-year period the amendment is in effect the public benefit expected is greater protection of the public health, safety, and welfare resulting from increased registration of qualified persons who will practice within the parameters of the rules and regulations of the Board. The rule will have no impact on small business. There will be a cost to persons who must sit for a section of the examination after forfeiting credit for that section. However, those persons face a greater cost under the existing rule which requires the forfeiture of all previously passed examination sections and requires them to reapply to sit for the examination. On balance, the rule as amended is less costly to persons required to comply with it.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment is proposed pursuant to Section 1051.202 of Tex. Occupations Code Annotated ch. 1051, which provides the Board with general authority to promulgate rules necessary to the administration of its statutory responsibilities. The amendment is also proposed pursuant to Section 1052.153(b) of Tex. Occupations Code Annotated ch. 1052, which requires the Board to prescribe the scope of the examination and the methods of procedure that will ensure the safety of the public welfare and property rights.

The proposed amendment to this rule does not affect any other statutes.

*§3.43. Reexamination.*

(a) Effective January 1, 2002, a Candidate's passing grade for any section of the examination is valid for five (5) years. Each Candidate who, after December 31, 2001, is approved for examination by the Board must pass all sections of the examination within five (5) years after the date the Candidate passes a section of the examination [~~is approved for examination by the Board~~]. A Candidate approved for examination by the Board after December 31, 2001, who does not pass all sections of the examination within five (5) years after passing a section of the examination [~~approval~~] will forfeit credit for the [~~each~~] section of the examination passed and must pass that section of the [~~submit a new registration application in order to obtain approval to take the entire~~] examination again.

(b) Each Candidate approved for examination by the Board prior to January 1, 2002, must pass all sections of the examination no later than December 31, 2006. A Candidate approved for examination by the Board prior to January 1, 2002, who does not pass all sections of the examination by December 31, 2006, will forfeit credit for each section of the examination the candidate passed before January 1, 2002, and must pass each of those sections [~~and must submit a new registration application in order to obtain approval to take the entire examination~~] again. The Candidate's passing grade for any section of the examination taken after January 1, 2002, is valid for five (5) years.

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 November 4, 2004.

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Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: December 19, 2004
For further information, please call: (512) 305-8535

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## SUBCHAPTER K. HEARINGS--CONTESTED CASES

**22 TAC §3.234**

The Texas Board of Architectural Examiners proposes new §3.234 for Title 22, Chapter 3, Subchapter K, pertaining to the suspension of registration as a disciplinary action by the Board. The reason for the new rule is to provide guidance to the Board and to administrative law judges when considering whether the probation of a registrant's registration should be active or probated. The rule would also specify the possible terms and conditions to practice that may be imposed as a part of probated suspension of registration. The rule would support the imposition of consistent disciplinary action upon registrants.

Under the rule, active suspension, prohibiting practice, would be imposed for violations that: caused a serious threat to the public health and safety, caused damage to property in excess of $1,000, resulted in a violation of the terms and conditions of a probated suspension, were committed by one with a significant sanction history, or would likely engage in a practice not in compliance with standards normally followed by reasonably prudent registrants.

Probated suspension of registration would be applicable to other less serious violations. The rule lists the following terms and conditions that may be imposed to restrict the practice of one whose

registration is under a probated suspension: monitoring of practice by mandatory reporting or impromptu visits, directed continuing education, limitations on the scope of practice, required supervision and control of practice by another registrant, and successful completion of a rehabilitation program for the treatment of substance abuse.

The rule would also specify disciplinary action that may be taken against a person who practices with an actively suspended registration or who violates the terms and conditions of a probated suspension of registration. The disciplinary action that may be taken for such a violation is prolonged suspension, a more restricted probated suspension, an administrative penalty, or revocation.

As a result of this new rule, the Board and administrative law judges would have the guidelines to impose terms and conditions of the suspension of registration that is appropriate under the facts and circumstances of each case. The new rule would also support the imposition of the suspension of registration in a manner that is consistent in similar cases.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the new rule is in effect, there would be no fiscal impact on local government. Since the rule would provide guidelines to pre-existing statutory authority, there is no anticipated fiscal impact on state government.

Ms. Hendricks also has determined that for the first five-year period the new rule is in effect the public benefits expected as a result of the new rule are as follows: the rules would provide guidance in the imposition of disciplinary action by the Board. To the extent that the rule may provide notice to registrants on the possible disciplinary consequences for violations under certain circumstances, it may serve as a deterrent to conduct that poses a danger to the public. The rule will have no impact on small business. There would be no cost to persons subject to the rule which cost does not currently exist. The Board currently has the authority to suspend registration as a disciplinary action. The rule creates guidelines for imposing those pre-existing sanctions.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The new rule is proposed pursuant to Section 1051.202 of Tex. Occupations Code Annotated ch. 1051, which provides the Board with general authority to promulgate rules necessary to the administration of its statutory responsibilities. The rule is also proposed pursuant to Section 1051.501 of Tex. Occupations Code Annotated ch. 1051 which grants the Board authority to take enforcement action against a person who violates the laws enforced by the Board. The new rule is also proposed pursuant to Section 1052.251 of Tex. Occupations Code Annotated ch. 1052, which authorizes the Board to suspend registration as a disciplinary action and specifies the terms and conditions that may be imposed upon a probated suspension.

The proposed new rule does not affect any other statutes.

*§3.234. Suspension of Registration.*

(a) If suspension of a person's registration is the appropriate sanction for a violation of a statutory provision or rule enforced by the Board, the Board and the administrative law judge shall apply the following guidelines to determine whether the suspension will be active or probated:

(1) The Board and the administrative law judge shall impose an active suspension upon a finding that the respondent:

(A) violated a statutory provision or rule enforced by the Board which caused a serious threat to the health or safety of the public;

(B) violated a statutory provision or rule enforced by the Board which caused economic damage to property in excess of $1,000;

(C) committed a violation of a statutory provision or rule enforced by the Board while the respondent's registration was on probated suspension;

(D) has a sanction history including at least two findings by the Board that the respondent engaged in conduct for which the respondent's registration could have been suspended or revoked pursuant to §3.232; or

(E) would likely engage in the practice of Landscape Architecture in a manner that does not comply with a standard or practice normally followed by a reasonably prudent Landscape Architect under the same or similar circumstances.

(2) In any case in which active suspension is not warranted, the suspension imposed by the Board shall be probated.

(b) A person whose registration is under active suspension may not engage in the Practice of Landscape Architecture. A person whose registration is under active suspension may not Supervise and Control or have Responsible Charge over the Practice of Landscape Architecture by another.

(c) The Board may impose any of the following terms and conditions upon the practice of a person whose registration is subject to a probated suspension:

(1) monitoring of practice, including mandatory submission of information to the Board and random and unannounced visits by personnel of the Board to investigate compliance with the terms of the probated suspension;

(2) directed continuing education on applicable subjects, including ethics training, in excess of the continuing education requirements applicable to all Registrants;

(3) limitations on scope of practice;

(4) mandatory Supervision and Control of practice by another registered Landscape Architect; and

(5) successful completion of a rehabilitation program pursuant to §3.150.

(d) If a person violates the terms of a probated suspension of registration, the Board may:

(1) prolong the period of probated suspension;

(2) impose an active suspension of registration; or

(3) impose additional terms and conditions upon the probated suspension.

(e) If a person engages in the Practice of Landscape Architecture while the person's registration is subject to an active suspension, the Board may impose any or all of the following:

(1) issue an order restraining any further practice by the person;

(2) impose an administrative penalty;

(3) impose an additional period of suspension; or

(4) revoke the person's certificate of registration.

(f) In addition to fulfilling the terms and conditions of a probated or active suspension of registration, a person must fulfill the requirements of §3.178 in order to obtain reinstatement of the person's suspended certificate of registration.

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 November 4, 2004.

TRD-200406608
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: December 19, 2004
For further information, please call: (512) 305-8535

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## CHAPTER 5. INTERIOR DESIGNERS
## SUBCHAPTER C. EXAMINATION

### 22 TAC §5.53

The Texas Board of Architectural Examiners proposes an amendment to §5.53 for Title 22, Chapter 5, Subchapter C, pertaining to examinations. The reason for the amendment to this rule is to simplify it and make it less stringent upon candidates seeking registration. The amendment would allow registration candidates to maintain credit for passing a section of the registration examination for five years after passing it.

Pursuant to the rule as amended, a person who passes a section of the registration examination would be required to pass the remaining sections of the examination within five years in order to be registered. A person who fails to pass the remaining sections of the examination within that period would forfeit credit for the section of examination passed and would have to pass that section again in order to be registered. Under the rule as it currently exists, a person must pass the examination within five years after she or he is approved by the Board for examination. Pursuant to the current rule, a person who does not pass all sections of the examination within five years after approval forfeits credit for all sections passed and must submit a new registration application for approval to take the entire examination again.

The amendment also modifies the current rule as it applies to persons who were approved to take the examination prior to January 1, 2002. As amended, the rule would retain the existing requirement that applicants approved before January 1, 2002, must pass all sections of the examination by December 31, 2006. However, failure to meet that deadline would result in the forfeiture of only those sections of the examination passed prior to January 1, 2002, not forfeiture of all sections passed, as currently required under the rule.

The amendment makes the rule less stringent in that the five-year period would commence at a later date - upon passage of a section of the examination in lieu of upon approval to take the examination. The consequences of failing to pass all sections of the examination within the five-year period would also be less severe. Failure to meet the deadline would result in the forfeiture of the credit for only those examination sections passed on or before the commencement of the five-year period. In addition, the amendment would repeal a provision requiring candidates to submit another registration application upon failing to meet the five-year deadline.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended section is in effect, there will be no fiscal impact on local government. There would be no direct fiscal impact on state government because fees paid to sit for sections of the examination are paid to the examination provider under contract with the Board. As amended, the rule would allow candidates to continue to sit for sections of the examination after failing to meet the five-year deadline. Under the current rule, those candidates will have to reapply for registration and gain approval from the Board to take the examination again. To the extent that candidates who would not reapply under the current rule may ultimately become registered under the rule as amended and thereafter pay registration fees to the Board, the amendment would have an indeterminable positive fiscal impact on state government.

Ms. Hendricks has also determined that for the first five-year period the amendment is in effect the public benefit expected is greater protection of the public health, safety, and welfare resulting from increased registration of qualified persons who will practice within the parameters of the rules and regulations of the Board. The rule will have no impact on small business. There will be a cost to persons who must sit for a section of the examination after forfeiting credit for that section. However, those persons face a greater cost under the existing rule which requires the forfeiture of all previously passed examination sections and requires them to reapply to sit for the examination. On balance, the rule as amended is less costly to persons required to comply with it.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment is proposed pursuant to Section 1051.202 of Tex. Occupations Code Annotated ch. 1051, which provides the Board with general authority to promulgate rules necessary to the administration of its statutory responsibilities. The amendment is also proposed pursuant to Section 1053.152 of Tex. Occupations Code Annotated ch. 1053 which requires the Board to establish the qualifications for the issuance of a certificate of registration and specifies passing a registration examination as a qualification for issuance of a certificate of registration.

The proposed amendment to this rule does not affect any other statutes.

*§5.53. Reexamination.*

(a) Effective January 1, 2002, a Candidate's passing grade for any section of the examination is valid for five (5) years. Each Candidate who, after December 31, 2001, is approved for examination by the Board must pass all sections of the examination within five (5) years after the date the Candidate passes a section of the examination [~~is approved for examination by the Board~~]. A Candidate approved for examination by the Board after December 31, 2001, who does not pass all sections of the examination within five (5) years after passing a section of the examination [~~approval~~] will forfeit credit for the [~~each~~] section of the examination passed and must pass that section of the [~~submit a new registration application in order to obtain approval to take the entire~~] examination again.

(b) Each Candidate approved for examination by the Board prior to January 1, 2002, must pass all sections of the examination no

later than December 31, 2006. A Candidate approved for examination by the Board prior to January 1, 2002, who does not pass all sections of the examination by December 31, 2006, will forfeit credit for each section of the examination the candidate passed before January 1, 2002, and must pass each of those sections [~~and must submit a new registration application in order to obtain approval to take the entire examination~~] again. The Candidate's passing grade for any section of the examination taken after January 1, 2002, is valid for five (5) years.

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 November 4, 2004.

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Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8535

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## SUBCHAPTER K. HEARINGS--CONTESTED CASES

### 22 TAC §5.244

The Texas Board of Architectural Examiners proposes new §5.244 for Title 22, Chapter 5, Subchapter K pertaining to the suspension of registration as a disciplinary action by the Board. The reason for the new rule is to provide guidance to the Board and to administrative law judges when considering whether the probation of a registrant's registration should be active or probated. The rule would also specify the possible terms and conditions to practice that may be imposed as a part of probated suspension of registration. The rule would support the imposition of consistent disciplinary action upon registrants.

Under the rule, active suspension, prohibiting practice, would be imposed for violations that: caused a serious threat to the public health and safety, caused damage to property in excess of $1,000, resulted in a violation of the terms and conditions of a probated suspension, were committed by one with a significant sanction history, or would likely engage in a practice not in compliance with standards normally followed by reasonably prudent registrants.

Probated suspension of registration would be applicable to other less serious violations. The rule lists the following terms and conditions that may be imposed to restrict the practice of one whose registration is under a probated suspension: monitoring of practice by mandatory reporting or impromptu visits, directed continuing education, limitations on the scope of practice, required supervision and control of practice by another registrant, and successful completion of a rehabilitation program for the treatment of substance abuse.

The rule would also specify disciplinary action that may be taken against a person who practices with an actively suspended registration or who violates the terms and conditions of a probated suspension of registration. The disciplinary action that may be taken for such a violation is prolonged suspension, a more restricted probated suspension, an administrative penalty, or revocation.

As a result of this new rule, the Board and administrative law judges would have the guidelines to impose terms and conditions of the suspension of registration that is appropriate under the facts and circumstances of each case. The new rule would also support the imposition of the suspension of registration in a manner that is consistent in similar cases.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the new rule is in effect, there would be no fiscal impact on local government. Since the rule would provide guidelines to pre-existing statutory authority, there is no anticipated fiscal impact on state government.

Ms. Hendricks has also determined that for the first five-year period the new rule is in effect the public benefits expected as a result of the new rule are as follows: the rules would provide guidance in the imposition of disciplinary action by the Board. To the extent that the rule may provide notice to registrants on the possible disciplinary consequences for violations under certain circumstances, it may serve as a deterrent to conduct that poses a danger to the public. The rule will have no impact on small business. There would be no cost to persons subject to the rule which cost does not currently exist. The Board currently has the authority to suspend registration as a disciplinary action. The rule creates guidelines for imposing those pre-existing sanctions.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The new rule is proposed pursuant to Section 1051.202 of Tex. Occupations Code Annotated ch. 1051, which provides the Board with general authority to promulgate rules necessary to the administration of its statutory responsibilities. The new rule is also proposed pursuant to Section 1051.501 of Tex. Occupations Code Annotated ch. 1051 which grants the Board authority to take enforcement action against a person who violates the laws enforced by the Board. The new rule is also proposed pursuant to Section 1053.251 of Tex. Occupations Code Annotated ch. 1051, which authorizes the Board to suspend registration as a disciplinary action and specifies the terms and conditions that may be imposed upon a probated suspension.

The proposed new rule does not affect any other statutes.

*§5.244. Suspension of Registration.*

(a) If suspension of a person's registration is the appropriate sanction for a violation of a statutory provision or rule enforced by the Board, the Board and the administrative law judge shall apply the following guidelines to determine whether the suspension will be active or probated:

(1) The Board and the administrative law judge shall impose an active suspension upon a finding that the respondent:

(A) violated a statutory provision or rule enforced by the Board which caused a serious threat to the health or safety of the public;

(B) violated a statutory provision or rule enforced by the Board which caused economic damage to property in excess of $1,000;

(C) committed a violation of a statutory provision or rule enforced by the Board while the respondent's registration was on probated suspension;

(D) has a sanction history including at least two findings by the Board that the respondent engaged in conduct for which the respondent's registration could have been suspended or revoked pursuant to §5.242; or

(E) would likely engage in the practice of Interior Design in a manner that does not comply with a standard or practice normally followed by a reasonably prudent Interior Designer under the same or similar circumstances.

(2) In any case in which active suspension is not warranted, the suspension imposed by the Board shall be probated.

(b) A person whose registration is under active suspension may not engage in the Practice of Interior Design. A person whose registration is under active suspension may not Supervise and Control or have Responsible Charge over the Practice of Interior Design by another.

(c) The Board may impose any of the following terms and conditions upon the practice of a person whose registration is subject to a probated suspension:

(1) monitoring of practice, including mandatory submission of information to the Board and random and unannounced visits by personnel of the Board to investigate compliance with the terms of the probated suspension;

(2) directed continuing education on applicable subjects, including ethics training, in excess of the continuing education requirements applicable to all Registrants;

(3) limitations on scope of practice;

(4) mandatory Supervision and Control of practice by another registered Interior Designer; and

(5) successful completion of a rehabilitation program pursuant to §5.159.

(d) If a person violates the terms of a probated suspension of registration, the Board may:

(1) prolong the period of probated suspension;

(2) impose an active suspension of registration; or

(3) impose additional terms and conditions upon the probated suspension.

(e) If a person engages in the Practice of Interior Design while the person's registration is subject to an active suspension, the Board may impose any or all of the following:

(1) issue an order restraining any further practice by the person;

(2) impose an administrative penalty;

(3) impose an additional period of suspension; or

(4) revoke the person's certificate of registration.

(f) In addition to fulfilling the terms and conditions of a probated or active suspension of registration, a person must fulfill the requirements of §5.188 in order to obtain reinstatement of the person's suspended certificate of registration.

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 November 4, 2004.

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Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8535

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# TITLE 28. INSURANCE

## PART 1. TEXAS DEPARTMENT OF INSURANCE

### CHAPTER 1. GENERAL ADMINISTRATION
### SUBCHAPTER C. MAINTENANCE TAXES AND FEES

**28 TAC §1.414**

The Texas Department of Insurance proposes an amendment to §1.414, concerning assessment of maintenance taxes and fees for payment in the year 2005. The amendment is necessary to adjust the rates of assessment for maintenance taxes and fees for 2005 on the basis of gross premium receipts for calendar year 2004 or on some other designated basis. Section 1.414 sets rates of assessment and applies those rates to life, accident, and health insurance; motor vehicle insurance; casualty insurance, and fidelity, guaranty and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; title insurance; health maintenance organizations; third party administrators; and corporations issuing prepaid legal services contracts.

Karen A. Phillips, Chief Financial Officer, has determined that for the first five-year period the section is in effect, the anticipated fiscal impact on state government is estimated income of $34,124,137 to the state's general revenue fund. There will be no fiscal implications for local government as a result of enforcing or administering the proposed section, and there will be no effect on local employment or local economy.

Ms. Phillips has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing the section will be facilitation in the collection of maintenance tax and fee assessments. The cost in 2005 to an insurer receiving premiums in 2004 for motor vehicle insurance will be .036 of 1% of those gross premiums; for casualty insurance, fidelity, guaranty and surety bonds, .073 of 1% of those gross premiums; for fire insurance and allied lines, including inland marine, .184 of 1% of those gross premiums; for workers' compensation insurance, .027 of 1% of those gross premiums; and for title insurance, .037 of 1% of those gross premiums. The cost in 2005 for an insurer receiving premiums in 2004 for life, health, and accident insurance, will be .026 of 1% of those gross premiums. In 2005, a health maintenance organization will pay $.34 per enrollee if it is a single service health maintenance organization or a limited service health maintenance organization, and $1.02 per enrollee if it is a multi-service health maintenance organization. In 2005, a third party administrator will pay .125 of 1% of its correctly reported gross amount of administrative or service fees received in 2004. In 2005, for a corporation issuing prepaid legal service contracts, the cost will be .022 of 1% of correctly reported gross revenues for 2004. There will be no difference in rates of assessment between micro, small and large

businesses. Based on the department's experience, the actual cost of gathering the information required to fill out the form, calculate the assessment and complete the form will be the same for micro, small and large businesses. Generally a person familiar with the accounting records of the company and accounting practices in general will perform the activities necessary to comply with the section. Such persons are similarly compensated by small and large insurers. The compensation is generally between $17 - $30 an hour. The actual amount of time necessary to complete the form will vary depending on the number of lines of insurance written by the company. For a company that writes only one line of business subject to the tax, the department estimates it will take two hours to complete the form. If a company writes all the lines subject to the tax, the department estimates it will take six hours to complete the form. The department does not believe it is legal or feasible to waive or modify the requirements of the proposed section for small and micro businesses because the assessment is required by statute and makes no provision for waiving or reducing assessments for small or micro-businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 20, 2004, 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 comments should be simultaneously submitted to Karen A. Phillips, Chief Financial Officer, Mail Code 108-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any requests for a public hearing should be submitted separately to the Office of the Chief Clerk.

The amendment is proposed under the Insurance Code Articles 4.17, 5.12, 5.24, 5.49, 5.68, 9.46, 21.07-6 §21, 23.08A, and 20A.33 and §36.001. These articles provide authorization for the Texas Department of Insurance to assess maintenance taxes and fees for the lines of insurance and related activities specified in amended §1.414. Article 4.17 establishes a maintenance tax based on insurance premiums for life, accident, and health coverage and the gross considerations for annuity and endowment contracts. Article 5.12 establishes a maintenance tax based on insurance premiums for motor vehicle coverage. Article 5.24 establishes a maintenance tax based on insurance premiums for casualty insurance and fidelity, guaranty and surety bonds coverage. Article 5.49 establishes a maintenance tax based on insurance premiums for fire and allied lines coverage, including inland marine. Article 5.68 establishes a maintenance tax based on insurance premiums for workers' compensation coverage. Article 9.46 establishes a maintenance fee based on insurance premiums for title coverage. Article 21.07-6 §21 establishes a maintenance tax based on the correctly reported gross amount of administrative or service fees for third party administrators. Article 23.08A establishes a maintenance tax based on the correctly reported gross revenues of corporations issuing prepaid legal service contracts. Article 20A.33 establishes an annual tax based on the gross amounts of revenues collected for the issuance of health maintenance certificates or contracts. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following articles of the Insurance Code are affected by this rule: Articles 4.17, 5.12, 5.24, 5.49, 5.68, 9.46, 21.07-6 §21, 21.46, 21.54, 23.08A and 20A.33.

*§1.414. Assessment of Maintenance Taxes and Fees, 2005 [~~2004~~].*

(a) The following rates for maintenance taxes and fees are assessed on gross premiums of insurers for calendar year 2004 [~~2003~~] for the lines of insurance specified in paragraphs (1) - (5) of this subsection:

(1) for motor vehicle insurance, pursuant to the Insurance Code Article 5.12, the rate is .036 [~~.035~~] of 1.0%;

(2) for casualty insurance, and fidelity, guaranty and surety bonds, pursuant to the Insurance Code Article 5.24, the rate is .073 [~~.091~~] of 1.0%;

(3) for fire insurance and allied lines, including inland marine, pursuant to the Insurance Code Article 5.49, the rate is .184 [~~.188~~] of 1.0%;

(4) for workers' compensation insurance, pursuant to the Insurance Code Article 5.68, the rate is .027 [~~.030~~] of 1.0%;

(5) for title insurance, pursuant to the Insurance Code Article 9.46, the rate is .037 [~~.045~~] of 1.0%.

(b) The rate for the maintenance tax to be assessed on gross premiums for calendar year 2004 [~~2003~~] for life, health, and accident insurance and the gross considerations for annuity and endowment contracts, pursuant to the Insurance Code Article 4.17, is .026 of 1.0%.

(c) Rates for maintenance taxes are assessed for calendar year 2004 [~~2003~~] for the following entities:

(1) pursuant to the [~~Texas Health Maintenance Organization Act, §33 (~~] Insurance Code Article 20A.33[~~)~~], the rate is $.34 [~~$.30~~] per enrollee for single service health maintenance organizations, $1.02 [~~$.89~~] per enrollee for multi-service health maintenance organizations and $.34 [~~$.30~~] per enrollee for limited service health maintenance organizations;

(2) pursuant to the Insurance Code Article 21.07-6, §21, the rate is .125 [~~.150~~] of 1.0% of the correctly reported gross amount of administrative or service fees for third party administrators; and

(3) pursuant to the Insurance Code Article 23.08A, the rate is .022 of 1.0% of correctly reported gross revenues for corporations issuing prepaid legal service contracts.

(d) The enactment of Senate Bill 14, 78th Legislature, Regular Session, relating to certain insurance rates, forms, and practices, did not affect the calculation of the maintenance tax rates or the assessment of the taxes.

(e) The taxes assessed under subsections (a), (b), and (c) of this section shall be payable and due to the Comptroller of Public Accounts, Austin, TX 78774-0100 on March 1, 2005 [~~2004~~].

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

Filed with the Office of the Secretary of State on November 8, 2004.

TRD-200406627
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: December 19, 2004
For further information, please call: (512) 463-6327

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## CHAPTER 3. LIFE, ACCIDENT AND HEALTH INSURANCE AND ANNUITIES

## SUBCHAPTER FF. CREDIT LIFE AND CREDIT ACCIDENT AND HEALTH INSURANCE

The Texas Department of Insurance proposes new §§3.5002, 3.5206, and 3.5603 and amendments to §§3.5001, 3.5105, 3.5201, 3.5202, 3.5307, 3.5502, 3.5601, 3.5602, 3.5604, 3.5607, 3.5608, 3.5610, 3.5901, 3.5905, and 3.6002, concerning credit life and accident and health insurance. These amendments and new sections are proposed to implement Texas Insurance Code Chapter 1153, as amended by Acts 2001, 77th Legislature in House Bill (HB) 2159, and to improve the organization of the subchapter by putting all definitions into one section of the subchapter. Sections 3.5110 and 3.5603 have been proposed for repeal elsewhere in this issue of the Texas Register, because those sections were primarily composed of definitions that have been moved to proposed §3.5002. HB 2159 amended Chapter 1153 with regard to the setting of premium rates for credit life and credit accident and health insurance by changing the way those rates are set. Previously, the commissioner of insurance, through a contested case proceeding, established a presumptive premium rate for all classes of business and terms of coverage, and insurers that experienced excessive loss ratios, as defined by rule, could request approval for deviations from the presumptive premium rate. The most recent presumptive premium rates were established by Commissioner's Order No. 99-1481. HB 2159, however, required that the presumptive premium rates be set by rulemaking, rather than through a contested case. It also allows insurers to file their rates in an amount that deviates from the presumptive premium rates without seeking written approval from the commissioner, as long as the deviated rate is no more than 30% above nor more than 30% below the presumptive premium rate. House Bill 2159 also allows insurers to use rates that are more than 30% above or below the presumptive premium rates, if the insurer obtains prior written approval from the commissioner. Pursuant to the new ratemaking procedures of HB 2159, on June 1, 2004, the department published credit life and credit accident and health statistical data for the years 2000, 2001, and 2002 and solicited rate proposals from interested persons. The department's contractor, Milliman reviewed the submissions and prepared a rate assessment and recommendation based on that information and the published statistical data. The Milliman report, rate recommendations from interested parties, information responsive to inquiries about staff's recommendation, and statistical data for 2000-2002 are available at www/company/creditcomments.html. Comments on the proposed rule will also be posted. Interested persons may request a copy of this information by contacting the Life/Health Division at 512-322-3401 or lifehealth@tdi.state.tx.us.

Credit rates have traditionally been applied to predetermined classes of business, as more specifically defined in proposed §3.5002(7). In reviewing industry expense and experience data supplied in response to the data call, the department observed that the loss ratios and compensation percentages for one class, Class E--Dealers, were significantly different than the other classes in both credit life and credit accident and health. This disparity establishes a basis for distinguishing between Class E and all other classes of business, as contemplated by Insurance Code §1153.102(a). In order to give interested persons the greatest latitude in commenting on this proposed change, however, the department has decided to publish for comment two alternatives, one that establishes a presumptive premium rate for Class E alone, with a different presumptive premium rate for all classes other than Class E (Alternative 1), and a second alternative that establishes (as the department has done in previous rate proceedings) a composite presumptive premium rate for all classes of business combined (Alternative 2),. The department seeks comments on the alternatives as well as on which alternative to adopt. Likewise, for the same reasons, the department proposes two alternatives for comment with regard to loss ratios: one which presents loss ratios based on plan and class of business (Alternative 1), and one which presents composite loss ratios for all classes of business combined for credit life and all classes of business combined for credit accident and health policies (Alternative 2). Section 3.5001 is proposed for amendment to update a statutory reference from Insurance Code Article 3.53 to Insurance Code, Chapter 1153. The statutory reference changed because of the legislature's recodification of the Insurance Code. Similar amendments to update statutory citations are found in proposed amendments to §§3.5105, 3.5201, 3.5502, 3.5610 and 3.5905. Similarly, an amendment to §3.5905 is proposed to update a statutory citation from a reference to Texas Civil Statutes, Article 5069, Chapters 3 - 6, 6A, 7 and 15 to the current citation, which is Finance Code Chapters 342 - 348. Finally, because this proposal relocates rule language and proposes new sections, it includes various amendments to assure correct citations to other rule sections, adherence to proper form, and enhanced readability. New §3.5002 is proposed to include definitions for the subchapter. All of the definitions that were previously found in §§3.5110 and 3.5603 are included in this new section. The new section also includes definitions for the terms actual earned premium, approved deviation by case, automatic deviation, class of business, credit disability, presumptive premium rate, pro rata method, rule of anticipation and sum of the digits method, also known as rule of 78 method.

The proposed amendment to §3.5202 adds language to clarify that the test of reasonableness applies to approved deviations, and that the loss ratio comparison is to be applied to rates that would exist if an approved deviation is allowed to become effective. The loss ratios that serve as the parameters for the test of reasonableness addressed in §3.5202 were determined using the underlying proposed presumptive premium rates and their claims cost components. The loss ratios are presented in two alternatives in this section. As noted earlier, Alternative 1 presents loss ratios based on plan and class of business. This matches Alternative 1 of the proposal for new presumptive premium rates in the proposed amendment to §3.5206. Alternative 2 presents composite loss ratios for all classes of business combined for credit life and for all classes of business combined for credit accident and health policies.

Details supporting the proposal to amend §3.5206, establishing new presumptive premium rates, can be found in the Milliman report, located as stated earlier. The proposal identifies two alternatives: Alternative 1 establishes presumptive premium rates for Class E alone and different presumptive premium rates for all classes other than Class E, and Alternative 2 is the composite presumptive premium rate for all classes of business combined. In adopting presumptive premium rates, the commissioner will decide which of these two approaches to use.

The proposed presumptive premium rates for credit life were initially calculated using actual claim cost experience by plan. However, some plans have an insufficient volume of business upon which to rely for rate setting purposes. In addition, the actual

claim experience by plan does not reflect the actuarial value of the coverage and benefit differences by plan. Experience pertinent to credit accident and health plans presented the same problem. Therefore, the department relied on the claims experience in Plans 10 and 17 for credit accident and health to develop a presumptive premium rate for those plans. The presumptive premium rates established for Plans 10 and 17 are the starting points for establishing the presumptive premium rates for all other credit accident and health plans.

The proposed presumptive premium rates for both credit life and credit accident and health were developed using a method known as the component rating methodology, which was used in developing the current presumptive premium rates. Component rating considers each element of income and expense and builds the premium rate as a combination of the components. The components utilized in developing the presumptive premium rates are claims cost, general insurance expenses, investment income, premium taxes and fees, commissions, and profit. The formula used to develop a premium rate using the component rating method is: Component Rate = (claims cost + general insurance expenses)/(1+investment income-premium taxes and fees-commissions-profit).

For credit life, the claims cost component represents the annual mortality costs based on experience data for the years 2000, 2001 and 2002. This data was submitted by carriers through the department's annual credit data call. The claims cost component used in determining the rate for credit life is .1048 for Class E alone and .1558 for all classes except Class E.

For credit accident and health, this component is calculated as the ratio of incurred claims to presumptive premiums multiplied by the current presumptive premium rate. The claims cost components used in determining the presumptive premium rates for credit accident and health for Class E alone are 1.1480 (Plan 10) and .5130 (Plan 17). For all classes except Class E, the claims cost components used in determining the presumptive premium rates are 1.6886 (Plan 10) and .6034 (Plan 17).

For credit life, the general insurance expenses were estimated using information reported by the companies in the annual credit data calls summary expense report. The percentage ratio of the mean Texas certificates in force to the mean nationwide certificates in force was calculated for the years 2000, 2001 and 2002. This percentage was then multiplied by the total of all expense items. This gave an estimate of the Texas expenses for all plans for each year. The estimated Texas expenses were then divided by the total presumptive earned premium to develop Texas expenses as a percentage of presumptive earned premiums. Estimated annual expenses per plan were determined by applying that percentage to the presumptive earned premiums by plan. Next the annual plan expense costs per $1,000 were calculated by dividing the estimated annual expenses per plan by the plan mean insurance in force. These were then converted to expense per plan. A major change from previous studies appeared in the ratio of Texas estimated expenses to presumptive earned premium. That ratio dropped from the 20 - 21% range for studies over the six years prior to the current study period to 14% for 2000 through 2002. Because the general insurance expense component of the formula should reflect a trend over the past and current studies, this component was determined by using a weighted average expense ratio, applying a 25% weight to the current study period data and a 75% weight to the prior study period. As a result, the general insurance expense component used in determining the presumptive premium rate for credit life is .0642.

For credit accident and health, general insurance expense was determined by multiplying the ratio of total general insurance expense to presumptive earned premium by the current presumptive premium rate. As in credit life, there was an inconsistency between the general insurance expense calculated using the 2000-2002 data and general insurance expense using the experience data reported for 1997-1999. As a result, a weighted average component was calculated using a weight of 25% for 2000-2002 experience data and a weight of 75% for the 1997-1999 experience data. The general insurance expense component for credit accident and health is .5501 (Plan 10) and .2918 (Plan 17).

An annual earning rate of 3.5% was assumed for the investment income component. This rate is based on review of past and current yield for U.S. Treasury and corporate bonds with durations of less than five years. Investment income is excluded from this proposal, however, because single premium rates are currently discounted for interest in the presumptive premium rate calculation formula and because the investment income in outstanding balance business is negligible.

A percentage of 2.75% was assumed for state premium taxes, licenses, fees and other assessments. The commissioner used this same value in his 1999 order. Insurance Code art. 4.11 requires insurers selling life insurance to pay taxes at a rate of one-half of 1.75% on the first $450,000 of gross premiums and on gross premiums above that amount.

The value for the commissions component is 25% and is unchanged from the assumption the commissioner used in the 1999 presumptive premium rate order. The commission component does not fix or limit the amount an insurer may pay in commissions.

A profit of 5.75% of premium was used. This factor is calculated as follows: (target before-tax return on equity (15%) minus net investment income on equity (3.5%)) divided by the premium to equity ratio of 2.0. The overall target return on equity of 15% used in the calculation is based on industry practice. For comparison purposes, a 15% pre-tax ratio of return is equivalent to a 12% after-tax rate of return with a 20% effective tax rate, or to a 10.5% after-tax rate of return with a 30% effective tax rate. The premium to equity ratio of 2.0 is a key assumption and reflects surplus targets for the industry, driven in part by risk based capital requirements, along with recognition that surplus strain on single premium business may require additional commitments of equity by the insurance carrier. The commissioner also used a ratio of 2.0 in the profit margin calculation in the last presumptive premium rate order.

For credit life, the presumptive premium rates were initially calculated using actual claim cost experience by plan. However, some plans have an insufficient volume of business upon which to fully rely for rate setting purposes. In addition, the actual claim experience by plan does not reflect the actuarial value of the coverage and benefit differences by plan. Therefore, the department relied on the claims experience in Plan 1, which contains over 50% of all credit life earned premium during the experience period, to develop a presumptive premium rate for that plan. The presumptive premium rates for all other credit life plans use the rate relationships below, which reasonably represent the actuarial value of the coverage and benefit differences in each plan.

SPn = ((n x (n+1))/2n2) x (12/10) x Op = ((12 x (n + 1))/20n) x Op

And, for level term insurance on single lives:

LTn = (12/10) x Op

where,

SPn =Single premium rate per year of coverage per $100 of initial decreasing indebtedness repayable in "n" equal monthly installments.

LTn =Single premium rate per year of coverage per $100 of level life insurance where the indebtedness remains level during the term of the coverage and is repayable in a single sum at the end of the term.

Op =Monthly outstanding balance premium rate per $1,000 of insured indebtedness.

n =Original repayment period, in months; assumed to be twenty-four months.

Presumptive premium rates for coverages on joint lives are 150% of the corresponding single life presumptive premium rates. A comparison of the experience for single life and joint life rates was made by type of plan. While there was variability within the plan sub-groups, the overall ratio of the annual claims cost of joint life to single life business is 1.434 (143.4%) for the years 2000-2002. This result confirms the reasonableness of the use of the 150% multiple for joint credit life rates.

For credit accident and health, the presumptive premium rates were calculated using the component rating method for Plans 10 and 17 for Class E alone and all classes other than Class E. Percentages representing the ratio of the indicated presumptive premium rate to the current presumptive premium rates were calculated. The Plan 10 percentages of the current presumptive premium rates were applied to the current presumptive premium rate schedule to determine the recommended presumptive premium rates for Class E alone and all classes except Class E for all single life, single premium plans and all outstanding balance other plans. The Plan 17 percentages were used for all single life, outstanding balance revolving account plans.

A discount rate of 3.5% was assumed. This rate is based on a review of the past and current yield for U.S. Treasury and corporate bonds with durations of less than five years.

The anticipated loss ratios for credit life and credit accident and health, separated by Class E and all classes except Class E, were determined using the underlying proposed presumptive premium rates and their claim cost components.

The proposal to amend §3.5307 strikes language from the section that is not pertinent and which could create confusion about the standard established by §3.5307.

The proposed amendment to §3.5601 requires that a request for an approved deviation must be presented on form CI-DRF and in accordance with §3.5602. Sec. 3.5602 is proposed for amendment to include specific reference to for CI-DRF.

Proposed §3.5603 includes the credibility table that was a part of §3.5603 that is now proposed for repeal. The amendment proposed for §3.5607 makes clear that the upward approved deviated single account case rate is the authorization addressed by that section.

Kim Stokes, Senior Associate Commissioner, Life, Health and Licensing Program, 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.

Ms. Stokes has determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of the proposed sections will be greater flexibility and less cost for insurers in setting rates for credit life and credit accident and health insurance policies. Both the industry and the public should benefit from a ratemaking that uses the most current statistical data.

The probable economic cost to persons required to comply with the sections will be the possible revenue impacts from the changes in rates and the costs associated with reprogramming to effect the new rates. With regard to the latter, the department has traditionally set the effective dates of rates with enough lead time to accommodate industry needs. In addition, it is the department's position that adoption of the proposal will have no adverse effect on small or micro businesses. Rates must be based on statistical data and statutory standards, and exceptions or other variations cannot be implemented unless justified by recognized standards of rate setting. Waiver or modification of rates for small or micro businesses is therefore not appropriate, in the absence of evidence or statutory requirements. The department notes that any small or micro business that is adversely affected by a presumptive premium rate may take advantage of the automatic deviation or, if justified, an approved deviation.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 20, 2004 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 for Regulatory Matters, Life, Health and Licensing Program, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The commissioner will consider adoption of the proposed amendments in a public hearing under Docket No. 2608 at 9:30 a.m. on January 6, 2005, in Room 100 of the William P. Hobby Building, 333 Guadalupe, Austin, Texas.

Staff circulated a working draft of the proposed rule for comment on October 19, and on October 26, 2004, the department held an informal meeting to discuss the rules draft and proposed procedures for the hearing.

Parties that submitted rate proposals or other data to the department in response to the department's June 2004 request must re-submit those materials timely for them to be considered as a comment on the proposed rule. All commenters are also urged to include work papers with their comments. The department plans to post all comments, along with work papers, at the internet address identified earlier, in order for all interested parties to be able to review the comments prior to the hearing.

## DIVISION 1. GENERAL PROVISIONS

**28 TAC §3.5001, §3.5002**

The amendments and new sections are proposed under the Insurance Code Chapter 1153 and §36.001. Chapter 1153 gives the commissioner authority to set presumptive premium rates by rule for credit life and accident and health policies. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers

and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statutes are affected by this proposal: Insurance Code, Chapter 1153

*§3.5001. Authority and Scope.*

This subchapter [~~of the rules and regulations of the Texas Department of Insurance~~] is [~~promulgated and~~] adopted pursuant to the authority provided in [~~the~~] Insurance Code, Chapter 1153, [~~Article 3.53, §12, as amended~~]. This [~~The rules and regulations in this~~] subchapter applies [~~apply~~] to all life insurance and all accident and health insurance sold in connection with loans and other credit transactions, the premium for which is charged to or paid for in whole or in part either directly or indirectly by the debtor, regardless of the nature, type, or plan of the credit insurance coverage or premium payment system, which shall include any such credit insurance which purports to be on a "cost free," "no cost," "give away," or other "no charge" basis insofar as a debtor is concerned, but shall not apply to:

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

*§3.5002. Definitions.*

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

(1) Account--The aggregate credit life insurance or credit accident and health coverage for a single class of business written through a single creditor, or written through more than one creditor under common control or ownership, by the insurer, whether coverage is written on a group or individual policy basis.

(2) Actual earned premium--The total of all premiums earned at the premium rates actually charged and in force during the experience period.

(3) Approved deviation by case--A premium rate or premium rate schedule adjusted in accordance with the deviation procedures set out in Division 6 of this subchapter (relating to Deviation Procedures).

(4) Automatic deviation--A premium rate that is filed pursuant to Insurance Code §1153.105.

(5) Average number of life years--The average of the number of group certificates or individual policies in force each month during the experience period (without regard to multiple coverage) times the number of years in the experience period.

(6) Case---Either a "single account case" or a "multiple account case" as follows:

(A) Single account case--An account that is at least 25% credible or, at the option of the insurer, any higher percentage as determined by the credibility table set out in §3.5603 of this subchapter (relating to Credibility Table). An insurer exercising this option must in writing notify and obtain written approval of the commissioner, of the credibility factor it will use to define a "single account case." Once the commissioner is so notified, the credibility factor will remain in effect for the insurer until a different election has been filed in writing by the insurer and approved by the commissioner.

(B) Multiple account case--A combination of all the insurer's accounts of the same class of business with experience in this state, excluding all single account cases of the insurer defined in subparagraph (A) of this paragraph: or with the approval of the commissioner, "multiple account case" also means two or more accounts of the insurer, having like underwriting characteristics which are combined by the insurer for premium rating purposes, excluding all "single account cases" as defined in subparagraph (A) of this paragraph and other "multiple account cases" defined previously.

(7) Class of business--A class of business listed as follows:

(A) Class A--Commercial banks, savings and loan associations and mortgage companies;

(B) Class B--Finance companies and small loan companies;

(C) Class C--Credit unions;

(D) Class D--Production credit associations (agriculture and horticulture P.C.A.s);

(E) Class E--Dealers (including auto and truck, other dealers, and retail stores; and

(F) Class F--Other than subparagraphs (A) - (E) of this paragraph.

(8) Closed-end transactions--Credit transactions other than "open-end transactions" as defined in this section.

(9) Credibility factor--The degree to which the past experience of a case can be expected to occur in the future. The credibility factor is based either on the average number of life years or the incurred claim count during the experience period as shown in the credibility table set out in §3.5603 of this subchapter. The insurer shall notify the commissioner in writing, and obtain written approval of the commissioner, about which of the two methods it will use in measuring credibility. Once the commissioner is so notified, the method will remain in effect for the insurer until a change has been filed with and approved by the commissioner.

(10) Credit disability--Credit Accident and Health.

(11) Earned premium at presumptive premium rate--Premium earned during the experience period at the presumptive premium rate set forth in §3.5206 of this subchapter (relating to Presumptive Premium Rates). If the rate for a case is not the presumptive premium rate, premium earned at the presumptive premium rate must be determined in accordance with the conversion method set forth in Form CI-EP-L or Form CI-EP-DIS, as appropriate, provided by the department for that purpose, and set out in an attachment by the insurer to its deviation request form. The forms can be obtained from the Texas Department of Insurance, Filings Intake Division, MC 106-1E, P.O. Box 149104, Austin, Texas 78714-9104. The forms can also be obtained from the department's internet web site at www.tdi.state.tx.us.

(12) Experience--The earned premiums and incurred claims for a single or multiple account case. Experience will be the most recent experience in this state for a class of business, and may include the experience of the case while with a prior insurer to the extent necessary to achieve credibility.

(13) Experience period--The period of time for which experience is reported, but not for period longer than three years.

(14) Incurred claim count--The number of claims incurred for the case during the experience period. This means the total number of claims reported during the experience period (whether paid or in the process of payment) plus any incurred but not reported at the end of the experience period less the number of claims incurred but not reported at the beginning of the experience period. If a debtor has been issued more than one certificate for the same plan of insurance, only one claim is counted. If a debtor receives disability benefits, only the initial claim payment for that period of disability is counted.

(15) Incurred claims--The liability resulting from the happening of the contingency insured against whether paid, reported, not reported or resisted on accounting dates, valued by date of occurrence and, without reduction for reinsurance, at amounts, excluding claims expenses, sufficient to discharge the company from all liability and is equal to claims paid minus unreported claims beginning of period plus unreported claims end of period minus claim reserve beginning of period plus claim reserve end of period.

(16) Open-end transactions or revolving accounts--Transactions in which credit is extended by a creditor under an agreement whereby:

(A) the creditor reasonably contemplates repeated transactions;

(B) the creditor may impose a finance charge from time to time on an outstanding unpaid balance; and

(C) the amount of credit that may be extended to the debtor during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

(17) Presumptive premium rate--The rate established by the commissioner and set out in §3.5206 of this subchapter.

(18) Pro rata method--A method used in determining premium refunds based on the assumption that premiums are earned in equal increments over the term of the policy. The premium refunds are calculated by multiplying the original gross premium by a factor determined by the formula t/n, in which t is the number of months remaining from its evaluation date to the end of the loan and n is the number of months in the original term.

(19) Rule of anticipation (aka the single premium method)--A method used in determining premium refunds in which the unearned premium is equal to the gross single premium for the remaining term and remaining benefits.

(20) Sum of the digits method, aka rule of 78 method--A method used in determining premium refunds in which an unearned premium factor is calculated by dividing the sum of the original number of monthly payments by the sum of the remaining number of monthly payments. The premium refunds are calculated by multiplying the original gross premium by a factor determined by the formula (t * (t+1)/(n * (n+1), in which t is the number of months remaining from its evaluation date to the end of the loan and n is the number of months in the original term.

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 November 8, 2004.

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Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
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For further information, please call: (512) 463-6327

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## DIVISION 2. APPLICATIONS AND POLICIES

**28 TAC §3.5105**

The amendments and new sections are proposed under the Insurance Code Chapter 1153 and §36.001. Chapter 1153 gives the commissioner authority to set presumptive premium rates by rule for credit life and accident and health policies. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statutes are affected by this proposal: Insurance Code, Chapter 1153

*§3.5105. Application Provisions.*

(a) (No change.)

(b) Every application, enrollment form, or notice of proposed insurance shall provide for the signature of the debtor and shall set forth:

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

(7) a statement that upon acceptance of the insurance by the insurer and not later than 45 days after the date upon which the indebtedness is incurred (or, if the indebtedness is an open-end transaction, not later than 30 days from the date of application for coverage) the insurer shall cause the individual policy or the group certificate of insurance to be delivered to the debtor, and that if the insurance is not accepted by the insurer or by a substituted insurer as authorized by [~~the~~] Insurance Code §1153.158 [~~, Article 3.53, §6E~~], then any insurance charge made for such insurance shall be fully refunded and the creditor shall immediately give written notice to such debtor and shall promptly make an appropriate credit to the debtor's account in accordance with [~~the~~] Insurance Code §1153.203 [~~, Article 3.53, §8C~~] .

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

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

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## DIVISION 3. FILING AND APPROVAL OF FORMS AND RATES

**28 TAC §§3.5201, 3.5202, 3.5206**

The amendments and new sections are proposed under the Insurance Code Chapter 1153 and §36.001. Chapter 1153 gives the commissioner authority to set presumptive premium rates by rule for credit life and accident and health policies. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statutes are affected by this proposal: Insurance Code, Chapter 1153

*§3.5201. Submission of Form and Rate Filings.*

(a) Every insurance company, when submitting a schedule of rates for automatic or approved deviations from the presumptive premium rate [~~consideration by the commissioner of insurance~~], shall identify the rates to be used with the policy form submitted for approval. The [~~face and~~] face page of every form or schedule submitted to the commissioner [~~of insurance for consideration under the Insurance Code, Article 3.53~~], shall include with [~~have added to~~] its identifying form number the additional identification: ("3.53") if the form is an individual life and/or individual accident and health form and used only within the scope of Insurance Code Chapter 1153 [~~Article 3.53~~]; "(3.53 and 3.50)" if the form is a group life and/or group accident and health form and used only within the scope of Chapter 1153 [~~Article 3.53~~]; "(3.53 R.A.)" or "(3.53 O.E.)" if the form is a credit life and/or credit accident and health form and is written on open-end transactions. The designations "(3.53 R.A.)" or "(3.53 O.E.)" may not be used on forms or schedules providing insurance coverage on closed-end transactions. The additional identification, as required by this subsection [~~above~~], will only be used on credit life and/or credit accident and health insurance written under the scope of Insurance Code, Chapter 1153 [~~Article 3.53~~].

(b) (No change.)

*§3.5202. Reasonable Relation of Benefits to Premiums for Approved Deviations.*

As the basic test of the reasonableness of the relation of benefits to the premium charges for approved deviations, to be applied separately by policy form number, it is hereby declared that the benefits of credit life insurance or credit accident and health insurance, individual or group, shall not be considered to be reasonable in relation to the premium charges, unless it can be reasonably anticipated that a loss ratio of "claims incurred" to "earned premiums" will, after the increase becomes effective, be [~~is~~] no less than the following:

(1) Alternative 1:

(A) Loss Ratios For Class E Only:

*(i)* [~~(1)~~] credit life--41% [~~50%~~];

*(ii)* [~~(2)~~] credit accident and health: [~~--60%.~~]

*(I)* 45% for Plans 10 - 14 and 22 - 26 on the Presumptive Premium Rate Chart found at §3.5206 of this subchapter (relating to Presumptive Premium Rates); and

*(II)* 42% for Plans 16 - 19 on the Presumptive Premium Rate Chart found at §3.5206 of this subchapter.

(B) Loss Ratios For All Other Classes:

*(i)* credit life--47%;

*(ii)* credit accident and heath:

*(I)* 50% for Plans 10 - 14 and 22 - 26 on the Presumptive Premium Rate Chart found at §3.5206 of this subchapter; and

*(II)* 45% for Plans 16 - 19 on the Presumptive Premium Rate Chart found at §3.5206 of this subchapter.

(2) Alternative 2:

(A) credit life--43%;

(B) credit accident and health:

*(i)* 46% for Plans 10 - 14 and 22 - 26 on the Presumptive Premium Rate Chart found at §3.5206 of this subchapter; and

*(ii)* 44% for Plans 16 - 19 on the Presumptive Premium Rate Chart found at §3.5206 of this subchapter.

*§3.5206 Presumptive Premium Rates.*

The following presumptive premium rates are adopted by the commissioner and shall be used on or after March 1, 2005.
Figure 1: 28 TAC §3.5206
Figure 2: 28 TAC §3.5206

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

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## DIVISION 4. PRESUMPTIVELY ACCEPTABLE RELATION OF CREDIT LIFE INSURANCE BENEFITS TO PREMIUMS

**28 TAC §3.5307**

The amendments and new sections are proposed under the Insurance Code Chapter 1153 and §36.001. Chapter 1153 gives the commissioner authority to set presumptive premium rates by rule for credit life and accident and health policies. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statutes are affected by this proposal: Insurance Code, Chapter 1153

*§3.5307. Standard for Additional Benefits.*

If a contract of insurance includes other lawful benefit or benefits for which standards or reasonableness of benefits in relation to premium are not elsewhere in these sections determined or described, any premium charged therefor in excess of the rates set forth in these sections shall be shown to the satisfaction of the commissioner of insurance to be based upon credible statistics, and shall be reasonable in relation to the additional benefit provided [~~, and shall be in accordance with the basic loss ratio in §3.5202 of this title (relating to Reasonable Relation of Benefits to Premiums)~~].

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

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## DIVISION 5. STANDARDS OF BENEFITS FOR CREDIT ACCIDENT AND HEALTH INSURANCE

**28 TAC §3.5502**

The amendments and new sections are proposed under the Insurance Code Chapter 1153 and §36.001. Chapter 1153 gives the commissioner authority to set presumptive premium rates by rule for credit life and accident and health policies. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statutes are affected by this proposal: Insurance Code, Chapter 1153

*§3.5502. Joint Credit Accident and Health Insurance.*

(a) Joint debtors, for purposes of credit accident and health insurance written under [~~Article 3.53, Texas~~] Insurance Code, Chapter 1153 means only spouses or business partners, and such persons must be jointly and severally liable for repayment of the single indebtedness and be joint signers of the instrument of indebtedness. Endorsers and guarantors are not eligible for credit insurance coverage. Joint accident and health coverage shall not be written covering more than two debtors.

(b)- (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.

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## DIVISION 6. DEVIATION PROCEDURES

**28 TAC §§3.5601, 3.5602 - 3.5604, 3.5607, 3.5608, 3.5610**

The amendments and new sections are proposed under the Insurance Code Chapter 1153 and §36.001. Chapter 1153 gives the commissioner authority to set presumptive premium rates by rule for credit life and accident and health policies. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statutes are affected by this proposal: Insurance Code, Chapter 1153

*§3.5601. Deviation by Case Allowed.*

Two types of rate deviation are allowed, [~~. They are:~~] automatic deviation and approved deviation as defined in §3.5002 of this title (relating to Definitions).

(1) (No change.)

(2) Approved Deviation by Case. Notwithstanding the determination by the Commissioner of Insurance of presumptive premium rates which are reasonable in relation to the benefits of a policy providing the coverage to which the rates are applicable, an insurer who has experienced excessive loss ratios or who fails to develop the minimum loss ratio as defined in §3.5202 of this title (relating to Reasonable Relation of Benefits to Premiums for Approved Deviations), for a case consisting of a single account or combination of accounts, as [~~"account" is hereinafter~~] defined in §3.5002 of this title, will be permitted, at its own request, or may be required by the commissioner, to adjust the premium rate or premium rate schedule for such case in accordance with the deviation procedures set out in this subchapter [~~§§3.5601-3.5610 of this title (relating to Deviation Procedures)~~]. An approved deviation request shall be presented with form CI-DRF and §3.5602 of this division (relating to Request for an Approved Deviated Premium Rate).

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

*§3.5602. Request for an Approved Deviated Premium Rate.*

A request for an approved deviated rate must be made in writing and shall include all of the information which is required under this subchapter [~~§§3.5601 to 3.5610 of this title (relating to Deviation Procedures~~]. It must be accompanied by a list of the creditors whose experience is the basis for such request, and must be attested to by an officer of the insurer. The use of any approved rate deviation approved by the commissioner is limited to those creditors whose names appear on such list. No rate deviation may be used unless and until approved by the commissioner in writing. Any request for an approved deviated rate shall be submitted to the commissioner through the Filings Intake Division in the manner prescribed on Form CI-DRF [~~the form~~] provided by the department for that purpose. The form can be obtained from the Texas Department of Insurance, Filings Intake Division, MC 106-1E, P.O. Box 149104, Austin, Texas 78714-9104. The form can also be obtained from the department's internet web site at www.tdi.state.tx.us [~~http://www.tdi.state.tx.us~~]. In order to provide the commissioner sufficient time for review, all requests for approved rate deviations must be submitted a minimum of 60 days prior to the proposed effective date of the approved deviated rate.

*§3.5603. Credibility Table.*

The following table shall be used to determine the credibility factor of a case, as defined in §3.5002 of this title (relating to Definitions).
Figure: 28 TAC §3.5603:

*§3.5604. Minimum Change.*

(a) For credit life insurance, the currently charged premium rates will be considered the case rates if the single premium (or its equivalent) case rate per $100 of initial amount of insured indebtedness repayable in 12 equal monthly installments as determined under this subchapter [~~these §§3.5601-3.5610 of this title (relating to Deviation Procedures)~~] is within 5.0% of the corresponding premium under the currently charged premium rates for the case.

(b) For credit accident and health insurance, the currently charged premium rates will be considered the case rate if the case rate as determined under this subchapter [~~these §§3.5601-3.5610 of this title (relating to Deviation Procedures)~~] is within 5.0% of the currently charged premium rates for the case.

*§3.5607. Termination of Upward Deviated Case Rate.*

An upward approved deviated single account case rate [~~Said authorization~~] shall continue for a period equal to the experience period on which it was based, not to exceed three years, subject however to the provisions of §3.5608 of this title (relating to Annual Review of Approved Deviated Rates). If a change of insurers occurs, an upward approved

deviated single account case rate may be continued by the replacement carrier by giving written notification to the commissioner, within 30 days of the effective date of providing coverage to the account, of the new carrier's intent to continue the upward approved deviated single account case rate. The period of continuance shall not go beyond the expiration date originally granted to the previous insurer for that account. If a change of insurers occurs, an approved deviated multiple account case rate shall not be continued by the replacement insurer beyond the date the original carrier lost the account unless all of the accounts forming the multiple account pool are taken over. If all accounts are taken over, the requirements for continuation are the same as mentioned in the preceding paragraph for single account cases.

*§3.5608. Annual Review of Approved Deviated Rates.*

All approved deviated rates shall be filed for review [~~reviewed~~] for each case in accordance with this subchapter [~~these §§3.5601 - 3.5610 of this title (relating to Deviation Procedures)~~] each year for each case. At the time of such review of approved deviated rates, adjustments may be made in the rates if the commissioner finds that experience shows that an adjustment is appropriate.

*§3.5610. Determination of Approved Deviated Case Rates.*

(a) For cases which are not of credible size, or have no experience, no approved deviation shall be made in the presumptive premium rates under these deviation procedures; except that nothing herein shall be construed as preventing any insurer from filing an automatic deviation pursuant to Insurance Code, §1153.105 [~~its rate schedules as otherwise provided under the Insurance Code, Article 3.53~~].

(b) For purposes of this section: if the coverage for a single creditor which qualifies as a case has been in force with the insurer for less than the experience period:

(1) (No change.)

(2) the experience considered in the determination of multiple state case rates shall be Texas experience for the case unless the insurer makes the one-time election to use only nationwide [~~countrywide~~] experience. The election to use only nationwide [~~countrywide~~] experience must be accompanied by a certification that the insurer uses the same nationwide basis in determining the case ratios in each state in which the case has experience. A grouping of states may be used subject to the same requirements of consistency and certification.

(c) - (d) (No change.)

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

Filed with the Office of the Secretary of State on November 8, 2004.

TRD-200406655
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: December 19, 2004
For further information, please call: (512) 463-6327

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## DIVISION 9. PREMIUM REFUNDS

**28 TAC §3.5901, §3.5905**

The amendments and new sections are proposed under the Insurance Code Chapter 1153 and §36.001. Chapter 1153 gives the commissioner authority to set presumptive premium rates by rule for credit life and accident and health policies. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statutes are affected by this proposal: Insurance Code, Chapter 1153

*§3.5901. Refund of Unearned Premiums.*

With respect to policies issued and certificates delivered after the effective date of these sections:

(1) (No change.)

(2) the refund of an unearned amount paid by or charged to a debtor for credit life insurance, or for credit accident and health insurance, on which the insurance charges to the debtor are paid in a single sum must be computed by the rule of anticipation, as defined in §3.5002 [~~§3.6101(b)~~] of this title (relating to Definitions [~~Policy Reserves~~]), or by another method which produces a substantially equal amount and is approved by the commissioner of insurance. This paragraph shall not be interpreted to preclude refunds for credit accident and health insurance to be computed by the mean of the gross unearned premium calculated by the "sum of the digits" (rule of 78) and the pro rata method.

*§3.5905. Refunds.*

No refund of premium need be made of an amount paid or charged to the debtor for credit insurance regulated under the Insurance Code, Chapter 1153 [~~Article 3.53~~], in the event of termination of the indebtedness or the insurance prior to the scheduled maturity date of the indebtedness if the amount of such refund is less than $3.00. (For insurance coverage subject to Finance Code Chapters 342 - 348 [~~Texas Civil Statutes, Article 5069, Chapters 3-6, 6A, 7, and 15~~], a refund must be made, except that no cash refund shall be required if the amount thereof is less than $1.00.)

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

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Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
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For further information, please call: (512) 463-6327

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## DIVISION 10. RESPONSIBILITIES AND OBLIGATIONS OF INSURANCE COMPANIES AND THEIR AGENTS AND REPRESENTATIVES

**28 TAC §3.6002**

The amendments and new sections are proposed under the Insurance Code Chapter 1153 and §36.001. Chapter 1153 gives the commissioner authority to set presumptive premium rates by rule for credit life and accident and health policies. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers

and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statutes are affected by this proposal: Insurance Code, Chapter 1153

*§3.6002. Delegation by Insurer of Responsibilities of Policy Issuance and Premium Collection.*

(a) The insurer, by its group policy, may authorize the group policyholder-creditor to issue certificates of group insurance or may authorize a legally appointed insurance agent of the insurer to issue certificates of insurance or policies of insurance, and respectively, to collect the insurance charge under the group policy, or premium therefor under an individual policy, provided that the master group insurance policy with the creditor or the agent's agreement with the agent under which such authority is granted shall require that:

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

(3) refunds of unearned premiums shall be made in accordance with this subchapter [~~§§3.5901-3.5906 of this title (relating to Premium Refunds) of these sections~~]; and

(4) (No change.)

(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 November 8, 2004.

TRD-200406657
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: December 19, 2004
For further information, please call: (512) 463-6327

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## CHAPTER 3. LIFE, ACCIDENT AND HEALTH INSURANCE AND ANNUITIES
## SUBCHAPTER FF. CREDIT LIFE AND ACCIDENT AND HEALTH INSURANCE

The Texas Department of Insurance proposes repeal of §3.5110 and §3.5603, concerning open and closed-end transactions and definitions. The repeal of these sections is necessary to consolidate definitions contained in those sections into one section. Simultaneous with this proposed repeal, proposed new §3.5002 is published elsewhere in this issue of the *Texas Register*, which implements, in part, Texas Insurance Code Chapter 1153, as amended by Acts 2001, 77th Legislature in House Bill (HB) 2159. That new section will include the definitions that are currently found in §3.5110 and §3.5603.

Kim Stokes, Senior Associate Commissioner, Life, Health and Licensing Program, has determined that during the first five years that the proposed repeal is in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the sections. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Stokes has also determined that for each year of the first five years the repeal of the sections is in effect, the public benefit anticipated as a result of administration and enforcement of the repealed sections will be the elimination of unnecessary rule sections and the fact that the rules pertinent to presumptive premium rates for credit and accident and health insurance will be easier for the public to understand. There is no anticipated economic cost to persons who are required to comply with the proposed repeal. There is no anticipated difference in cost of compliance between small and large businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 20, 2004 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-1C, 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 for Regulatory Matters, Life, Health and Licensing Program, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. A request for a public hearing must be submitted separately to the Office of Chief Clerk.

## DIVISION 2. APPLICATIONS AND POLICIES

### 28 TAC §3.5110

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

Repeal of §3.5110 and §3.5603 is proposed pursuant to Insurance Code Chapter 1153, and §36.001. Chapter 1153 gives the Commissioner of Insurance authority to set presumptive premium rates by rule for credit life and accident and health policies. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The proposed repeal affects regulation pursuant to the following statutes: Insurance Code, Chapter 1153.

*§3.5110. Open and Closed-End Transactions.*

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 November 8, 2004.

TRD-200406648
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: December 19, 2004
For further information, please call: (512) 463-6327

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## DIVISION 6. DEVIATION PROCEDURES

### 28 TAC §3.5603

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

Repeal of §3.5110 and §3.5603 is proposed pursuant to Insurance Code Chapter 1153, and §36.001. Chapter 1153 gives

the Commissioner of Insurance authority to set presumptive premium rates by rule for credit life and accident and health policies. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The proposed repeal affects regulation pursuant to the following statutes: Insurance Code, Chapter 1153.

*§3.5603. Definitions.*

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

Filed with the Office of the Secretary of State on November 8, 2004.

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Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
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For further information, please call: (512) 463-6327

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## CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

## SUBCHAPTER J. EXAMINATION EXPENSES AND ASSESSMENTS

### 28 TAC §7.1012

The Texas Department of Insurance proposes amendments to §7.1012, concerning assessments to cover the expenses of examining insurance companies. The amendments are necessary to adjust the rates of assessment to be levied against and collected from each domestic insurance company based on admitted assets and gross premium receipts for the 2004 calendar year, and from each foreign insurance company examined during the 2005 calendar year based on a percentage of the gross salary paid to an examiner for each month or part of a month during which the examination is made. The assessments made under authority of this proposed section will be in addition to, and not in lieu of any other charge which may be made under law, including the Insurance Code Article 1.16. The proposed amendment to subsection (c) will allow the department to efficiently collect the assessments.

Karen A. Phillips, Chief Financial Officer, has determined that for the first five-year period the section is in effect, the anticipated fiscal impact on state government is estimated income of $1,481,201 to the state's general revenue fund. There will be no fiscal implications for local government as a result of enforcing or administering the section, and there will be no effect on local employment or the local economy.

Ms. Phillips has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing the section will be the adoption of assessment rates to defray the expenses of examinations and administration of the laws related to examinations during the 2005 calendar year. Ms. Phillips has determined that the direct economic cost to individuals who are required to comply with the proposed section will vary. In the case of domestic companies, the amount of the assessment in 2005 will be .00045 of 1.0% of the domestic company's admitted assets as of December 31, 2004 (excluding pension assets specified in subsection (b)(2)(A)) and .00128 of 1.0% of a domestic company's gross premium receipts for 2004 (excluding pension related premiums specified in subsection (b)(2)(B) and premiums related to welfare benefits described in subsection (b)(5)). In the case of foreign companies examined in 2005, the amount of the assessment in 2005 will be 33% of the gross salary paid to each examiner for each month or partial month of the examination in order to cover the examiner's longevity pay; state contributions to retirement, social security, and the state paid portion of insurance premiums; and vacation and sick leave accruals. The proposed amendment to subsection (c) will allow the department to collect assessments within a reasonable time frame of the billing date. There will be no difference in rates of assessments between micro, small and large businesses, except that a minimum charge of $25 is assessed domestic companies in §7.1012(b)(3). The actual cost of gathering the information required to fill out the form, calculate the assessment and complete the form will be the same for micro, small and large businesses based on the department's experience. Generally a person familiar with the accounting records of the company and accounting practices in general will perform the activities necessary to comply with the section. Such persons are similarly compensated by small and large insurers. The compensation is generally between $17 - $30 an hour. The department estimates that the form can be completed in two hours to comply with this section. The department does not believe it is legal or feasible to waive or modify the requirements of the proposed section for small and micro businesses because the assessment is required by statute and makes no provision for waiving or reducing assessments for small or micro-businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 20, 2004, 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 comments should be simultaneously submitted to Karen A. Phillips, Chief Financial Officer, Mail Code 108-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any requests for a public hearing should be submitted separately to the Office of the Chief Clerk.

The amendment is proposed under the Insurance Code Article 1.16 and §36.001. The Insurance Code Article 1.16(a) and (b) authorizes the commissioner of insurance to make assessments necessary to cover the expenses of examining insurance companies and to comply with the provisions of the Insurance Code Articles 1.16, 1.17, and 1.18, in such amounts as the commissioner certifies to be just and reasonable. In addition, Article 1.16(c) provides that expenses incurred in the examination of foreign insurers by Texas examiners shall be collected by the commissioner by assessment. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following articles and section of the Insurance Code are affected by this rule: Articles 1.16, 1.17, 1.17A, 1.18, 1.19, 4.10 and 4.11, §803.007 (formerly Article 1.28).

*§7.1012. Domestic and Foreign Insurance Company Examination Assessments, <u>2005</u> [~~2004~~].*

(a) Foreign insurance companies examined during the 2005 [~~2004~~] calendar year shall pay for examination expenses according to the overhead rate of assessment specified in this subsection in addition to all other payments required by law including, but not limited to, the Insurance Code Article 1.16. Each foreign insurance company examined shall pay 33% of the gross salary paid to each examiner for each month or partial month of the examination in order to cover the examiner's longevity pay; state contributions to retirement, social security, and the state paid portion of insurance premiums; and vacation and sick leave accruals. The overhead assessment will be levied with each month's billing.

(b) Domestic insurance companies shall pay according to this subsection and rates of assessment herein for examination expenses as provided in the Insurance Code Article 1.16.

(1) The actual salaries and expenses of the examiners allocable to such examination shall be paid. The annual salary of each examiner is to be divided by the total number of working days in a year, and the company is to be assessed the part of the annual salary attributable to each working day the examiner examines the company during 2005 [~~2004~~]. The expenses assessed shall be those actually incurred by the examiner to the extent permitted by law.

(2) An overhead assessment to cover administrative departmental expenses attributable to examination of companies, which shall be paid and computed as follows:

(A) .00045 [~~.00296~~] of 1.0% of the admitted assets of the company as of December 31, 2004 [~~2003~~], upon the corporations or associations to be examined taking into consideration the annual admitted assets that are not attributable to 90% of pension plan contracts as defined in Section 818(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 818(a)); and

(B) .00128 [~~.00783~~] of 1.0% of the gross premium receipts of the company for the year 2004 [~~2003~~], upon the corporations or associations to be examined taking into consideration the annual premium receipts that are not attributable to 90% of pension plan contracts as defined in Section 818(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 818(a)).

(3) If the overhead assessment, as computed under paragraph (2)(A) and (B) of this subsection, produces an overhead assessment of less than a $25 total, a minimum overhead assessment of $25 shall be levied and collected.

(4) The overhead assessments are based on the assets and premium receipts reported in the annual statements, except where there has been an understating of assets and/or premium receipts.

(5) For the purpose of applying paragraph (2)(B) of this subsection, the term "gross premium receipts" does not include insurance premiums for insurance contracted for by a state or federal government entity to provide welfare benefits to designated welfare recipients or contracted for in accordance with or in furtherance of the Texas Human Resources Code, Title 2, or the federal Social Security Act (42 U.S.C. §301 et seq.)

(c) The overhead assessment assessed under subsections (b)(2) and (b)(3) of this section shall be payable and due to the Texas Department of Insurance, P.O. Box 149104, MC 108-3A, Austin, Texas 78714-9104 within 30 days of the invoice date [~~on December 31, 2004~~].

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

Filed with the Office of the Secretary of State on November 8, 2004.

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Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
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## CHAPTER 25. INSURANCE PREMIUM FINANCE

## SUBCHAPTER E. EXAMINATIONS AND ANNUAL REPORTS

### 28 TAC §25.88

The Texas Department of Insurance proposes an amendment to §25.88 concerning an assessment which will be used to cover the general administrative expense of insurance premium finance companies. The amendment is necessary to adjust the rate of assessment so there are sufficient funds to meet the expenses of performing the department's statutory responsibilities for examining, investigating, and regulating insurance premium finance companies. Under §25.88, the department levies a rate of assessment to cover the department's 2005 fiscal year's general administrative expense and collects the assessment from each insurance premium finance company on the basis of a percentage of total loan dollar volume for the 2004 calendar year.

Karen A. Phillips, Chief Financial Officer, has determined that for the first five-year period the section is in effect, the anticipated fiscal impact on state government will be income estimated at $113,710 to the state's general revenue fund. There is no fiscal implication for local government or employment or the local economy as a result of enforcing or administering the proposed section.

Ms. Phillips has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing the section will be the facilitation in the collection of an assessment to cover the general administrative expense connected to the regulation of insurance premium finance companies. The cost of the assessment to a premium finance company in 2005 will be .00154 of 1.0% of calendar year 2004 total loan dollar volume of the insurance premium finance company. The minimum cost for compliance based on assessment under the section is $250. There will be no difference in rates of assessment between micro, small and large businesses. Based on the department's experience, the actual cost of gathering the information required to fill out the form, calculate the assessment and complete the form will be the same for micro, small and large businesses. Generally a person familiar with the accounting records of the company and accounting practices in general will perform the activities necessary to comply with the section. Such persons are similarly compensated by micro, small and large insurance premium finance companies. The compensation is generally between $17 - $30 an hour. The department estimates that the form can be completed in two hours to comply with this section. The department does not believe it is legal or feasible to waive or modify the requirements of the proposed section for small and micro businesses because the

assessment is required by statute and makes no provision for waiving or reducing assessments for small or micro-businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 20, 2004, 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 comments should be simultaneously submitted to Karen A. Phillips, Chief Financial Officer, Mail Code 108-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any requests for a public hearing should be submitted separately to the Office of the Chief Clerk.

The amendment is proposed under the Insurance Code articles 24.06(c), 24.09, and §36.001. Article 24.06(c) provides that each insurance premium finance company licensed by the department shall pay an amount assessed by the department to cover the direct and indirect costs of examinations and investigations and a proportionate share of general administrative expenses attributable to regulation of insurance premium finance companies. Article 24.09 authorizes the department to adopt and enforce rules necessary to carry out provisions of the Insurance Code concerning the regulation of insurance premium finance companies. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following articles of the Insurance Code are affected by this section: Articles 24.05, 24.06, 24.08, 24.09, and 24.10.

*§25.88. General Administrative Expense Assessment.*

On or before April 1, 2005 [~~2004~~], each insurance premium finance company holding a license issued by the department under the Insurance Code, Chapter 24, shall pay an assessment to cover the general administrative expenses attributable to the regulation of insurance premium finance companies. Payment shall be sent to the Texas Department of Insurance, Examinations Division, Mail Code #305-2E, 333 Guadalupe, P. O. Box 149104, Austin, Texas 78701-9104. The assessment to cover general administrative expenses shall be computed and paid as follows.

(1) The amount of the assessment shall be computed as .00154 [~~.00679~~] of 1.0% of the total loan dollar volume of the company for calendar year 2004 [~~2003~~].

(2) If the amount of the assessment computed under paragraph (1) of this section is less than $250, the amount of the assessment shall be $250.

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 November 8, 2004.

TRD-200406629
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: December 19, 2004
For further information, please call: (512) 463-6327

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# TITLE 37. PUBLIC SAFETY AND CORRECTIONS

## PART 3. TEXAS YOUTH COMMISSION

### CHAPTER 97. SECURITY AND CONTROL

### SUBCHAPTER A. SECURITY AND CONTROL

**37 TAC §97.21**

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

The Texas Youth Commission (TYC) proposes the repeal of §97.21, concerning Approved Restraint Equipment. The repeal of the rule will allow for a significantly revised rule to be published in its place. The revised rule can be found in this same issue of the *Texas Register*.

Robin McKeever, 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.

Ms. McKeever also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the publication of an updated rule to replace this section. 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 within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The repeal is proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its function.

The proposed rule implements the Human Resources Code, §61.034.

*§97.21. Approved Restraint Equipment.*

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 November 8, 2004.

TRD-200406696
Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: December 19, 2004
For further information, please call: (512) 424-6301

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**37 TAC §97.23**

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

The Texas Youth Commission (TYC) proposes the repeal of §97.23, concerning Use of Force. The repeal of the rule will allow for a significantly revised rule to be published in its place. The revised rule can be found in this same issue of the *Texas Register*.

Robin McKeever, 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.

Ms. McKeever also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the publication of an updated rule to replace this section. 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 within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The repeal is proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its function.

The proposed rule implements the Human Resources Code, §61.034.

*§97.23. Use of Force.*

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

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Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: December 19, 2004
For further information, please call: (512) 424-6301

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**37 TAC §97.23**

The Texas Youth Commission (TYC) proposes new §97.23, concerning Physical Restraint. The new section will provide a greater consistency and clarity as to when physical restraint is to be used and what steps should be taken to prevent the need for it. Physical restraint is used only for purposes of restraining youth from harmful or dangerous conduct and only then as a last resort, using restraint techniques that are designed to prevent injury. The new section also provides guidance as to when physical restraint should and should not be used.

Robin McKeever, Acting 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.

Ms. McKeever also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the safety and protection of TYC youth from harmful or dangerous conduct. 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 within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, 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, §61.075, which provides the Texas Youth Commission with the authority to confine a youth under conditions it believes are best designed for the youth's welfare.

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

*§97.23. Physical Restraint.*

(a) Purpose. It is the policy of the Texas Youth Commission (TYC) not to use force against a youth except for purposes of physical restraint under the limited circumstances described in this rule. Problem-solving, verbal intervention and de-escalation techniques are expected to be used to the greatest extent possible to avoid the necessity for any physical restraint. When physical restraint becomes necessary, it is the policy of TYC to use restraint techniques that minimize the risk of harm to the youth and staff. Physical restraint is never to be used as punishment or for the convenience of staff.

(b) Applicability.

(1) See (GAP) §97.27 of this title (relating to Riot Control).

(2) To allow youth time to regain self-control, see (GAP) §97.35 of this title (relating to Temporary Segregation of Youth Out of Control) and (GAP) §97.39 of this title (relating to Isolation).

(3) For short-term placement of out-of-control youth in a security program, see (GAP) §97.40 of this title (relating to Security Program).

(4) See (GAP) §91.92 of this title (relating to Psychotropic Medication-Related Emergencies).

(c) Explanation of Terms Used.

(1) Full-Body Restraint--means use of a padded cloth or leather mechanical restraint devices to secure a youth to a specially designed bed as a means of physical restraint.

(2) Handle With Care--means a proprietary physical intervention system based on a passive manual restraint method that provides control without inflicting pain or injury.

(3) Manual Restraint--means use of hands-on techniques as a means of physical restraint.

(4) Mechanical Restraint--means use of a mechanical device applied to a youth as a means of physical restraint.

(5) OC Spray--also known as pepper spray, means the chemical agent, Oleoresin Capsicum (OC), used as a means of physical restraint.

(6) Physical Restraint--means restricting a youth's freedom of action by using various restraint methods, including manual restraint, mechanical restraint, OC spray and full-body restraint.

(7) Verbal Judo--means a proprietary system of communication and persuasion for de-escalating a situation before using physical restraint.

(d) When Physical Restraint Is Authorized.

(1) Physical restraint of a youth must never be used unless it is necessary in order to prevent the youth from:

(A) causing harm to himself/herself or others;

(B) causing property damage;

(C) escaping, absconding, or fleeing apprehension;

(D) resisting removal from a dangerous or disruptive situation;

(E) resisting administration of medical treatment when, under the circumstances, failure to administer the treatment could have serious health implications; or

(F) resisting collection of DNA samples as required by law.

(2) In deciding whether to physically restrain a youth for any of the purposes indicated above, a staff member must consider the following two questions:

(A) Is it likely that what the youth would be restrained from doing will actually occur, continue or escalate if the restraint is not undertaken immediately? Consider:

*(i)* how imminent or certain the risk is;

*(ii)* the extent to which the youth has voluntarily ceased the conduct; and

*(iii)* how effective de-escalation efforts have been.

(B) Under the circumstances existing at the time, is physical restraint justified and prudent? Consider:

*(i)* the extent of harm that might result if the youth is not restrained now and the conduct occurs, continues or escalates; and

*(ii)* the extent of the potential risk of harm to both the youth and staff by using physical restraint now.

(3) When both questions are answered affirmatively, the use of physical restraint is required. Sometimes that decision must be made in a split second in order to prevent the youth from causing serious harm. When either question is answered negatively, because the restraint is considered to be either unnecessary for now or unjustified or imprudent under the circumstances, preventive measures appropriate to the situation must be tried first.

(4) A youth must be released from physical restraint as soon as the purpose for which the youth was restrained under subsection (d)(1) of this rule has been achieved.

(e) Preventive Steps To Avoid The Necessity For Physical Restraint.

(1) In situations where a youth's behavior indicates that physical restraint may become necessary, or where a youth's resistance to compliance with a request may escalate, preventive steps must be taken to the greatest extent possible to prevent the need for physical restraint. The aim of these steps is to assist the youth in regaining self-control with dignity and complying voluntarily. These steps include:

(A) using Verbal Judo or other communication and persuasion techniques, along with empathy and presence, in appealing to the youth's reason and practical sense;

(B) re-directing the youth's attention and energy toward a more constructive objective; and

(C) using staff teamwork, particularly as a way to switch the youth's focus to staff members who may not have been involved in the situation initially.

(2) These preventive steps are most effective when they occur in a culture and climate of safety, where all youth and staff respect each other's person and are proactively engaged at all times in preventing the need for physical restraint. The steps for creating such a culture and climate include:

(A) respectful and active listening in order to create relationships of trust and connection between staff and youth and to encourage youth to break their ingrained code of silence;

(B) providing regular opportunities for conflict resolution and problem solving, and, when feasible and appropriate, delaying another scheduled activity in order to allow timely staff-supervised verbal intervention with other youth in behavior groups;

(C) rewarding youth and staff for their actions that prevent combative situations and that help create a culture and climate of safety; and

(D) implementing fair, firm, and consistent disciplinary consequences for misconduct that threatens safety and security.

(f) Approved Techniques For Physical Restraint. Techniques that may be used for physical restraint are limited to:

(1) agency-approved:

(A) Handle With Care methods of manual restraint;

(B) mechanical restraints;

(C) OC spray, under certain limited circumstances; and

(D) full-body restraints, under certain limited circumstances; or

(2) other methods of manual restraint that under the circumstances existing at the time:

(A) are more practical than the agency-approved Handle With Care methods of restraint, taking into account the youth's and staff's particular vulnerability to harm;

(B) involve a use of force to a degree no greater than that reasonably necessary to achieve the objective; and

(C) do not unduly risk serious harm or needless pain to the youth or staff.

(g) Prohibited Techniques of Physical Restraint. Prohibited techniques of restraint that unduly risk serious harm or needless pain to the youth include:

(1) restricting respiration in any way, such as applying a chokehold or applying pressure to a youth's back or chest;

(2) using any method that is capable of causing loss of consciousness or harm to the neck;

(3) pinning down with knees to torso, head and/or neck;

(4) slapping, punching, kicking, or hitting;

(5) using pressure point, pain compliance and joint manipulation techniques, other than an approved Handle With Care method for release of a chokehold, bite or hair pull;

(6) modifying restraint equipment or applying any cuffing technique that connects handcuffs behind the back to ankle restraints;

(7) dragging or lifting of the youth by the hair or by any type of mechanical restraints;

(8) using other youth or untrained staff to assist with the restraint;

(9) securing a youth to another youth or to a fixed object, other than to an agency-approved full-body restraint device; or

(10) administering a drug for controlling acute episodic behavior as a means of physical restraint, except when the youth's behavior is attributable to mental illness and the drug is authorized by a licensed physician and administered by a licensed medical professional.

(h) Approved Manual Restraint Techniques and Guidelines for Use.

(1) Approved Manual Restraint Techniques. Handle With Care methods of manual restraint are the agency-approved manual restraint techniques. Manual restraint is authorized only when the requirements of subsection (d) have been met.

(2) Guidelines for Use in Planned Manual Restraint Situations.

(A) When a youth is confined alone in a locked room and time is available to plan for manual restraint in the event preventive steps prove unsuccessful, the facility administrator or designee may approve planned manual restraint.

(B) All planned manual restraints must be videotaped, including a recording of a verbal description of the youth's conduct and all warnings provided the youth.

(C) Only staff trained in planned manual restraint may participate in the team that is assembled for the room entry.

(D) The youth must be warned to discontinue the misconduct at least two times after the team is assembled and before the room entry.

(3) Guidelines for use in Removing Clothing From Suicidal Youth.

(A) A mental health professional (MHP), as defined in (GAP) §91.88 of this title (relating to Suicide Alert Explanation of Terms), shall determine if physical restraint is necessary in order to remove clothing from a youth who displays suicidal ideation or behavior.

(B) Approval by the facility administrator or designee is required for the restraint.

(C) Manual restraint may only be used to remove clothing that could potentially be used for imminent self-injury.

(D) Clothing will be removed in the security unit, in a private location.

(E) Staff must ensure that at least one staff conducting the restraint is the same gender as the youth.

(F) Once the clothing has been removed, the restraint is terminated and protective clothing is issued.

(i) Approved Mechanical Restraints and Guidelines for Use.

(1) Approved Mechanical Restraint Equipment. The following devices, when used only in a manner consistent with their intended purpose and when the requirements of subsection (d) are met, are agency-approved mechanical restraint equipment:

(A) Handcuffs (Hard)--metal (not plastic) devices fastened around the wrist to restrain free movement of the hands and arms.

(B) Wristlets (Soft)--a cloth or leather band fastened around the wrist or arm and which may be secured to a waist belt.

(C) Anklets (Soft)--a cloth or leather band fastened around the ankle or leg.

(D) Leg Irons (Hard)--a metal, device with a length of chain fastened around the ankle to limit movement of the legs. Handcuffs may not be used to cuff the ankles. Oversized leg irons may be used if the standard leg irons do not go around the cuff of the ankle.

(E) Transportation Belt/Chain, Waist Band, and/or Belly Chain--these devices can be cloth, leather, or metal links that are fastened around the waist. The transportation belt is used to secure the arms to the sides or front of the body.

(F) Transport Box--a small metal box that may be used to secure handcuffs while using a transportation chain.

(G) Padlocks or Key Locks--these locks are used to secure handcuffs, wristlets, anklets, and ankle cuffs.

(H) Mittens--a cloth, plastic, foam rubber, or leather hand covering fastened around the wrist or lower arm. Acceptable fasteners include elastic, Velcro, ties, paper tape, and pull strings.

(I) Helmets--a plastic, foam rubber, or leatherhead covering. If appropriate, a face guard may be attached to the helmet. The device must be proper size for the youth, and the chin strap should not be so tight as to interfere with circulation.

(J) Spit Mask--a cloth or nylon covering that is designed to prevent spitting and discourage biting.

(K) Transport Leg Brace--a metal and nylon device that allows a person to walk, but will impede running or kicking. This device can be worn out of sight under trousers.

(2) Guidelines for Use.

(A) Mechanical restraint equipment must be applied properly. A device must not be secured so tightly as to interfere with circulation or so loosely as to permit chafing of the skin.

(B) When mechanical restraints are employed, the youth is placed on his/her side as soon as possible in order to help ensure adequate respiration and circulation.

(C) A mechanical restraint, for other than transportation or riot control, shall be terminated as soon as the purpose for which the youth was restrained under subsection (d)(1) of this rule has been achieved, but in any event within 30 minutes, unless an extension is approved by the facility administrator or designee. Approval must be obtained every 30 minutes until termination of restraint.

(D) When mechanical restraints are employed, staff shall ensure the youth's safety by checking the youth for adequate respiration and circulation every 30 minutes. Staff will provide continuous visual supervision and appropriate assistance until the mechanical restraint is terminated.

(3) Mechanical Restraint Use by the Transportation Unit. Mechanical wrist and ankle restraints attached to a waist belt by a lead chain shall be used during transportation by the transportation unit.

(4) Mechanical Restraint Use by Other Transporters.

(A) Mechanical ankle and wrist restraints attached to a waist belt by a lead chain shall be used during transportation when a youth is being transported to a high restriction program.

(B) Mechanical ankle and wrist restraints attached to a waist belt by a lead chain may be used when transporting a youth off-campus.

(C) Mechanical ankle and wrist restraints attached to a waist belt by a lead chain may be used when transporting a youth to a security unit and when transporting youth currently admitted to the security unit to activities outside the unit.

(D) Mechanical ankle and wrist restraints attached to a waist belt by a lead chain may be used when transporting youth currently admitted to the security unit to activities within the security unit.

(j) Approved Use of OC Spray and Guidelines for Use.

(1) Approved Use of OC Spray.

(A) OC Spray is the only agency-approved chemical agent. It is authorized for use only when:

*(i)* the requirements of subsection (d) have been met;

*(ii)* manual restraint is likely to result in injury to youth or (iii) staff under the circumstances existing at the time; and it is necessary to:

*(I)* quell a riot or major campus disruption;

*(II)* resolve a hostage situation;

*(III)* remove youth from behind a barricade;

*(IV)* secure an object that is being used as a weapon and that is capable of causing serious bodily injury; or

*(V)* rescue a person being assaulted by youth.

(B) Unless it is necessary to prevent loss of life or serious bodily injury, OC spray is not authorized for use when:

*(i)* the youth has been identified as having respiratory problems or other health conditions which would make use of OC spray dangerous; or

*(ii)* the youth has been assigned to a mental health treatment program or identified by a mental health professional as having a psychiatric condition or mental health diagnosis that would contraindicate the use of OC spray until the MHP has been given the opportunity to establish control; or

*(iii)* the youth is confined in a room in a security unit.

(2) Persons Authorized to Use OC Spray.

(A) OC spray is permitted only in TYC high restriction institutions and in high restriction contract care programs approved by the executive director or designee.

(B) Only staff who have been trained in the use of OC spray are authorized to use it.

(C) In TYC high restriction institutions, only security personnel whose regular assignment is outside the security unit are authorized to routinely carry OC spray on their person.

(3) Guidelines for Use.

(A) OC spray canisters must be carefully controlled at all times. Access to them must be controlled at a single central location.

(B) After administration of OC spray, staff must initiate de-contamination with cool water as soon as the purpose of the restraint has been achieved.

(C) Immediately following de-contamination from OC spray, medical staff will be contacted to examine and, if necessary, treat youth and staff.

(k) Approved Use of Full-Body Restraint and Guidelines for Use.

(1) Approved Use of Full-Body Restraint. A full-body restraint bed equipped with cloth or leather mechanical restraint straps/devices to secure a person on a bed, face upward, is the only agency- approved full-body restraint equipment. It must be used only in a manner consistent with its intended purpose. It is authorized for use only when:

(A) the requirements of subsection (d) have been met; and

(B) the restraint is necessary to prevent serious self-injury

(2) Persons Authorized to Use Full-Body Restraint.

(A) Full-body mechanical restraints are permitted only in TYC institutions and in high restriction contract care programs approved by the executive director or designee.

(B) Staff who may be expected to participate in any aspect of the restraint must receive special training and will not participate in its implementation until the training has been received. The training will include proper use and application of full body restraint devices and applicable TYC policies and guidelines regarding the implementation, documentation, and continuation of full body restraint.

(C) At least one staff trained specifically in full body restraint techniques must be involved in any take-down procedure. If at least one trained staff is not available to supervise, full-body restraint shall not be employed.

(3) Guidelines for Use.

(A) If the facility resources are not sufficient to support the procedural requirements for full body restraint as specified in this subsection, then full body restraint of the youth must not be employed.

(B) Authorization by the facility administrator or designee to use full body restraint is required and is valid for up to one hour only.

(C) Prior to the expiration of the first hour, the youth shall be evaluated by a MHP who may recommend approval to continue the full body restraint.

(D) In order to recommend continuation of the restraint, the mental health assessment will verify that the current use of full body restraint is not having a psychologically damaging effect and that the need for full body restraint is not due to an immediate psychiatric crisis which requires alternative interventions.

(E) Approval from a physician or a licensed doctoral psychologist must be obtained to continue the full body restraint beyond one (1) hour.

(F) Additional MHP assessment is required to extend the restraint beyond four (4) hours and at least every four (4) hours thereafter if the restraint continues.

(G) The facility administrator or designee my direct additional MHP assessment at any time.

(H) Restraint shall be terminated as soon as the youth's behavior indicates the threat of imminent self-injury is absent.

(I) Staff employing a full body restraint shall ensure the youth's personal dignity by providing a protected environment and as much privacy as possible.

(J) All items or articles (i.e. belts, gloves, and jewelry) with which a youth might injure himself/herself shall be removed prior to application of restraint devices. However, youth shall be permitted to wear as much clothing as is safe.

(K) Youth placed in full body restraint shall be provided:

*(i)* regular checks, performed by a nurse, of the physical condition of the youth and the placement of the restraints within the first 30 minutes and every hour during the restraint;

*(ii)* an assessment of circulation, position, and open airway checks at least every 15 minutes by specifically trained staff;

*(iii)* opportunity for motion and exercise for a period of not less than five (5) minutes at each half hour;

*(iv)* regularly scheduled meals and drinks served on appropriate food ware for safety;

*(v)* regularly prescribed medications, unless otherwise ordered by a physician;

*(vi)* opportunities for elimination of bodily waste are offered at least every two (2) hours;

*(vii)* a room of adequate size, free of safety hazards, adequately ventilated during warm weather, adequately heated during cold weather, and appropriately lighted; and

*(viii)* continuous visual supervision at arms' length by staff.

(L) No order or approval for full body restraint may be in force for longer than 12 hours. If such restraint is still required for the youth's safety, a physician must directly observe the youth and provide written orders.

(M) Use of medications to assist in calming an agitated youth at the time of restraint or as a substitute for restraint may be appropriate and/or the preferred method of treatment. Refer to (GAP) §91.92 of this title (relating to Psychotropic Medication-Related Emergencies).

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 November 8, 2004.

TRD-200406694
Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: December 19, 2004
For further information, please call: (512) 424-6301

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**37 TAC §97.25**

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

The Texas Youth Commission (TYC) proposes the repeal of §97.25, concerning Use of Force: Chemical Agent OC. The repeal of the rule will allow for a significantly revised rule to be published in its place. The revised rule can be found in this same issue of the *Texas Register*.

Robin McKeever, 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.

Ms. McKeever also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the publication of an updated rule to replace this section. 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 within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The repeal is proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its function.

The proposed rule implements the Human Resources Code, §61.034.

*§97.25. Use of Force: Chemical Agent OC.*

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 November 8, 2004.

TRD-200406695
Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: December 19, 2004
For further information, please call: (512) 424-6301

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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 1. ADMINISTRATION

## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 373. MEDICAID ESTATE RECOVERY PROGRAM

### SUBCHAPTER A. GENERAL

**1 TAC §§373.101, 373.103, 373.105**

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed new section's, submitted by the Texas Health and Human Services Commission have been automatically withdrawn. The new section's as proposed appeared in the April 30, 2004, issue of the *Texas Register* (29 TexReg 4039).

Filed with the Office of the Secretary of State on November 8, 2004.

TRD-200406638

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### SUBCHAPTER B. RECOVERY CLAIMS

**1 TAC §§373.201, 373.203, 373.205, 373.207, 373.209, 373.211, 373.213, 373.215, 373.217, 373.219**

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed new section's, submitted by the Texas Health and Human Services Commission have been automatically withdrawn. The new section's as proposed appeared in the April 30, 2004, issue of the *Texas Register* (29 TexReg 4040).

Filed with the Office of the Secretary of State on November 8, 2004.

TRD-200406639

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### SUBCHAPTER C. NOTICE

**1 TAC §§373.301, 373.303, 373.305, 373.307**

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed new section's, submitted by the Texas Health and Human Services Commission have been automatically withdrawn. The new section's as proposed appeared in the April 30, 2004, issue of the *Texas Register* (29 TexReg 4042).

Filed with the Office of the Secretary of State on November 8, 2004.

TRD-200406640

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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 10. DEPARTMENT OF INFORMATION RESOURCES

### CHAPTER 202. INFORMATION SECURITY STANDARDS

**1 TAC §§202.1 - 202.8**

The Department of Information Resources (department) adopts the repeal of 1 T.A.C. Chapter 202, §§202.1 - 202.8, concerning information security standards without changes to the proposal as published in the September 10, 2004, issue of the *Texas Register* (29 TexReg 8703). The repealed rules are no longer needed, because new information security standards rules are being adopted separately.

No comments were received in response to the proposed repeal.

The repeal is adopted in accordance with Texas Government Code §2054.052(a) which authorizes the department to adopt the rules necessary to implement its responsibilities under the Information Resources Management Act and 2054.121, which requires the repeal and readoption of rules in a manner that expressly applies to institutions of higher education.

Texas Government Code, §2054.052(a) and §2054.121 are affected by the repeal.

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 November 8, 2004.

TRD-200406635
Renée Mauzy
General Counsel
Department of Information Resources
Effective date: November 28, 2004
Proposal publication date: September 10, 2004
For further information, please call: (512) 936-6448

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### CHAPTER 202. INFORMATION SECURITY STANDARDS

The Department of Information Resources (department) adopts new 1 T.A.C. Chapter 202, §§202.1 - 202.3, 202.20 - 202.27 and 202.70 - 202.77, concerning information security standards, in their entirety, as part of the rules affected by the implementation of §2054.121, Texas Government Code, Coordination with Institutions of Higher Education. Sections 202.1, 202.24 - 202.27, 202.71, 202.74 and 202.76 are adopted with changes to the proposed text as published in the September 10, 2004, issue of the *Texas Register* (29 TexReg 8704). Sections 202.2, 202.3, 202.20 - 202.23, 202.70, 202.72, 202.73, 202.75 and 202.77 are adopted without changes and will not be republished.

Before department board consideration of the proposed rules, they were informally submitted to agencies that had asked to review rules affecting them prior to board consideration. No comments were received in response to that circulation of the proposed rules.

The department received written comments on the proposed rules from Texas A&M University, the University of Texas-San Antonio, the State Auditor's Office and the Information Technology Council for Higher Education.

The University of Texas at San Antonio commented that the word "institution" should be changed to "state agency" in §202.25(d). Staff agrees and has modified §202.25(d) to refer to "state agency." Texas A&M recommended §202.21(d)(3) and §202.71(d)(3) be modified to state that the Information Security Officer has a responsibility for monitoring confidential information resources as well as mission critical information resources. As proposed, these sections assigned responsibility only for mission critical information resources. Staff agrees with this comment and addressed it by expanding the definition of "mission critical" information resources in §202.1(9) to include confidential information.

The Information Technology Council for Higher Education recommended the department modify §202.26(d) and §202.76(d) to allow agencies and institutions of higher education nine calendar days rather than five working days in which to file monthly incident reports with the department. The department agrees with this comment and has modified §202.26(d) and §202.76(d) to allow nine calendar days in which to file monthly security incident reports.

The State Auditor's Office urged that the Information Security Officer report to executive level management rather than to senior management so that executive management is aware of security risks facing the institution of higher education and how those risks are addressed. Staff agrees with this recommendation and has changed §202.71(d) to require that the Information Security Officer report to executive management. The department supported this change because security concerns may not receive adequate attention at institutions of higher education if the Information Security Officers report to senior management, which may be a department head, rather than to executive management, such as a vice president of administration. Unaddressed

security issues may create liability for the State. Reporting to executive management does not require that the Information Security Officer report to the university president. It is sufficient for compliance with §202.71(d) that the Information Security Officer report to a vice president of administration position, or something similar, with broad administrative authority.

The State Auditor's Office also commented that DIR give guidance on a minimal approach to making risk management decisions and the content of the documentation of those decisions. We agree it would be helpful if we offered training on conducting risk assessments, and we will develop information resources manager training that covers several approaches to assessing security risks. However, no modifications are required by the rule in order to address this comment. In addition, the department maintains templates on its Website for the security policies we suggest be developed in §202.25(g) and §202.75(7).

The State Auditor's Office also commented that the security policies recommended in §202.25(g) and §202.75(7) be required unless the state agency or institution of higher education elected not to implement a particular policy based on a documented security risk assessment and that the decision not to implement a particular policy be approved by executive management. The department disagrees with the requested change because of the potential fiscal costs of implementing all of the policies.

The State Auditor's Office also urged that the definition of "test" in §202.1(16) of the rules be modified from "a simulated or documented 'real live' incident that has occurred" to "a simulated or documented 'real-live' incident that is formally documented." Staff agreed the definition should be modified to require that records be maintained of the test results and has modified the definition of "test" to require that records be kept of security incidents.

Finally, the State Auditor's Office requested that the results of tests conducted by state agencies, including institutions of higher education, be used to update disaster recovery plans. The department agrees and has modified §202.24(a)(5) and §202.74(a)(5) to require that in testing disaster recovery plans, the results of any tests performed be used to update the plan.

Section 202.1(7) of the new rules cites to the correct section of the Information Resources Management Act for the definition of "information resources." In new Chapter 202, relating to the management of security risks, §202.22(b) (for state agencies) and §202.72(b) (for institutions of higher education) provide that system changes could cause an entire classification to move to another risk category, either higher or lower. Section 202.25 (for state agencies) and §202.75 (for institutions of higher education) clarify that the security safeguards should apply when indicated by documented security risk management decisions. Section 202.25(c)(5) (for state agencies) and §202.75(c)(5) (for institutions of higher education) provide accurate cross references to new 1 T.A.C. §§203.1 - 203.3; 203.20 - 203.27 and 203.40 - 203.46, concerning management of electronic transactions and signed records, which is updated to refer to the Uniform Electronic Transactions Act (UETA) guidelines. 1 T.A.C. §§203.1 - 203.3; 203.20 - 203.27 and 203.40 - 203.46 are adopted separately.

Other than as noted above, the new rules are not substantively different than the former rules relating to information security standards in 1 T.A.C. Chapter 202, which are being repealed by separate action. The new rules are structured into three subchapters. Subchapter A, §202.1 - §202.3 contains definitions. Subchapter B, §§202.20 - 202.27 contains the rules that apply only to state agencies that are not institutions of higher education. Subchapter C, §§202.70 - 202.77, contains the rules that apply only to institutions of higher education.

## SUBCHAPTER A. DEFINITIONS

**1 TAC §§202.1 - 202.3**

The new rules are adopted pursuant to §2054.121, Texas Government Code, which requires the repeal and readoption of rules in a manner that expressly applies to institutions of higher education, and §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

The new rules affect §2054.121 and §2054.052, Texas Government Code.

*§202.1. Applicable Terms and Technologies for Information Security.*

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

(1) Access--To approach, interact with, or otherwise make use of information resources.

(2) Business Continuity Planning--The process of identifying critical data systems and business functions, analyzing the risks and probabilities of service disruptions and developing procedures to restore those systems and functions.

(3) Confidential Information--Information that is excepted from disclosure requirements under the provisions of applicable state or federal law, e.g. the Texas Public Information Act.

(4) Control--Any action, device, policy, procedure, technique, or other measure that improves security.

(5) Custodian of an Information Resource--A person responsible for implementing owner-defined controls and access to an information resource.

(6) Department--The Department of Information Resources.

(7) Information Resources--Is defined in §2054.003(7), Texas Government Code and/or other applicable state or federal legislation.

(8) Information Security Program--The elements, structure, objectives, and resources that establish an information resources security function within an institution of higher education, or state agency.

(9) Mission Critical Information--Information that is confidential or is defined by the institution of higher education, or state agency to be essential to the institution of higher education, or state agency function(s).

(10) Owner of an Information Resource--A person responsible:

(A) For a business function; and

(B) For determining controls and access to information resources supporting that business function.

(11) Platform--The foundation technology of a computer system. The hardware and systems software that together provide support for an application program. (Ref: Practices for Protecting Information Resources Assets.)

(12) Security Incident--An event which results in unauthorized access, loss, disclosure, modification, disruption, or destruction of information resources whether accidental or deliberate.

(13) Security Risk Analysis--The process of identifying and documenting vulnerabilities and applicable threats to information resources.

(14) Security Risk Assessment--The process of evaluating the results of the risk analysis by projecting losses, assigning levels of risk, and recommending appropriate measures to protect information resources.

(15) Security Risk Management--Decisions to accept exposures or to reduce vulnerabilities.

(16) Test--A simulated or documented "real-live" incident for which records are kept of the incident.

(17) User of an Information Resource--An individual or automated application authorized to access an information resource in accordance with the owner-defined controls and access rules.

(18) Vulnerability Report--A computer related report containing information described in §2054.077(b), Government Code, as that section may be amended from time to time.

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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Renée Mauzy
General Counsel
Department of Information Resources
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For further information, please call: (512) 936-6448

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## SUBCHAPTER B. SECURITY STANDARDS FOR STATE AGENCIES

**1 TAC §§202.20 - 202.27**

The new rules are adopted pursuant to §2054.121, Texas Government Code, which requires the repeal and readoption of rules in a manner that expressly applies to institutions of higher education, and §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

The new rules affect Texas Government Code §2054.252(a) and §2054.121.

*§202.24. Business Continuity Planning.*

(a) Business Continuity Planning covers all business functions of a state agency and it is a business management responsibility. State agencies should maintain a written Business Continuity Plan so that the effects of a disaster will be minimized, and the state agency will be able to either maintain or quickly resume mission-critical functions. The state agency head or his or her designated representative(s) shall approve the Plan. The Plan shall be distributed to key personnel and a copy stored offsite. Elements of the Plan for information resources shall include:

(1) Business Impact Analysis to systematically assess the potential impacts of a loss of business functionality due to an interruption of computing and/or infrastructure support services resulting from various events or incidents. The analysis shall address maximum tolerable downtime for time-critical support services and resources including, but not limited to:

(A) Personnel;

(B) Facilities;

(C) Technology platforms (all computer systems);

(D) Software;

(E) Information resources security utilities;

(F) Data networks and equipment;

(G) Voice networks and equipment;

(H) Vital electronic records and/or data.

(2) Security Risk Assessment to weigh the cost of implementing preventative measures against the risk of loss from not taking action.

(3) Recovery Strategy to appraise recovery alternatives and alternative cost-estimates which shall be presented to management.

(4) Implementation, testing, and maintenance management program addressing the initial and ongoing testing and maintenance activities of the Plan.

(5) Disaster Recovery Plan--Each state agency shall maintain a written disaster recovery plan for information resources. Information learned from tests conducted since the plan was last updated will be used in updating the disaster recovery plan. The disaster recovery plan will:

(A) Contain measures which address the impact and magnitude of loss or harm that will result from an interruption;

(B) Identify recovery resources and a source for each;

(C) Contain step-by-step instructions for implementing the Plan;

(D) Be maintained to ensure currency; and

(E) Be tested either formally or informally at least annually.

(b) Mission critical data shall be backed up on a scheduled basis and stored off site in a secure, environmentally safe, locked facility accessible only to authorized state agency representatives.

*§202.25. Information Resources Security Safeguards.*

(a) Access to information resources shall be managed to ensure authorized use.

(b) Confidentiality of data and systems.

(1) Confidential information shall be accessible only to authorized users. Information containing any confidential data shall be identified, documented, and protected in its entirety.

(2) Information resources assigned from one state agency to another shall be protected in accordance with the conditions imposed by the providing state agency.

(c) Identification/Authentication.

(1) Each user of information resources shall be assigned a unique identifier except for situations where risk analysis demonstrates no need for individual accountability of users. User identification shall be authenticated before the information resources system may grant that user access.

(2) A user's access authorization shall be appropriately modified or removed when the user's employment or job responsibilities within the state agency change.

(3) Information resources systems shall contain authentication controls that comply with documented state agency security risk management decisions.

(4) Information resources systems which use passwords shall be based on industry best practices on password usage and documented state agency security risk management decisions.

(5) For electronic communications where the identity of a sender or the contents of a message must be authenticated, the use of digital signatures is encouraged. Agencies should refer to guidelines and rules issued by the department for further information. (Ref. 1 T.A.C., Chapter 203. Additional information and guidelines are included in PART 2: Risks Pertaining to Electronic Transactions and Signed Records in "The Guidelines for the Management of Electronic Transactions and Signed Records" that are available at http://www.dir.state.tx.us/standards/UETA_Guideline.htm.).

(d) Encryption. Encryption for storage and transmission of information shall be used based on documented state agency security risk management decisions.

(e) Auditing.

(1) Information resources systems must provide the means whereby authorized personnel have the ability to audit and establish individual accountability for any action that can potentially cause access to, generation of, modification of, or effect the release of confidential information.

(2) Appropriate audit trails shall be maintained to provide accountability for updates to mission critical information, hardware and software and for all changes to automated security or access rules.

(3) Based on the security risk assessment, a sufficiently complete history of transactions shall be maintained to permit an audit of the information resources system by logging and tracing the activities of individuals through the system.

(f) Systems development, acquisition, and testing.

(1) Test functions shall be kept either physically or logically separate from production functions. Copies of production data shall not be used for testing unless the data has been declassified or unless all state and independent contractor employees involved in testing are otherwise authorized access to the data.

(2) Information security and audit controls shall be included in all phases of the system development lifecycle or acquisition process.

(3) All security-related information resources changes shall be approved by the owner through a quality assurance process. Approval must occur prior to implementation by the state agency or independent contractors.

(g) Security Policies. Each state agency head or his/her designated representative and information security officer shall create, distribute, and implement information security policies. The following policies are recommended; however, state agencies may elect not to implement some of the policies based on documented risk management decisions and business functions. These policies are not all inclusive and may be combined topically.

(1) Acceptable Use--Defines scope, behavior, and practices; compliance monitoring pertaining to users of information resources.

(2) Account Management--Establishes the rules for administration of user accounts.

(3) Administrator/Special Access--Establishes rules for the creation, use, monitoring, control, and removal of accounts with special access privileges.

(4) Backup/Recovery--Establishes the rules for the backup, storage, and recovery of electronic information.

(5) Change Management--Establishes the process for controlling modifications to hardware, software, firmware, and documentation to ensure the information resources are protected against improper modification before, during, and after system implementation.

(6) Email--Establishes prudent and acceptable practices regarding the use of email for the sending, receiving, or storing of electronic mail. Ensures compliance with applicable statutes, regulations, and mandates.

(7) Incident Management--Describes the requirements for dealing with computer security incidents including prevention, detection, response, and remediation.

(8) Internet/Intranet Use--Establishes prudent and acceptable practices regarding the use of the Internet and Intranet.

(9) Intrusion Detection--Establishes requirements for auditing, logging, and monitoring to detect attempts to bypass the security mechanisms of information resources.

(10) Network Access--Establishes the rules for the access and use of the network infrastructure.

(11) Network Configuration--Establishes the rules for the maintenance, expansion, and use of the network infrastructure.

(12) Password/Authentication--Establishes the rules for the creation, use, distribution, safeguarding, termination, and recovery of user authentication mechanisms.

(13) Physical Access--Establishes the rules for the granting, control, monitoring, and removal of physical access to information resources.

(14) Portable Computing--Establishes the rules for the use of mobile computing devices and their connection to the network.

(15) Privacy--Methodologies used to establish the limits and expectations regarding privacy for the users of information resources.

(16) Security Monitoring--Defines a process that ensures information resources security controls are in place, are effective, and are not being bypassed.

(17) Security Awareness and Training--Establishes the requirements to ensure each user of information resources receives adequate training on computer security issues.

(18) Platform Hardening--Establishes the requirements for installing and maintaining the integrity of a platform in a secure fashion.

(19) Authorized Software--Establishes the rules for software use on information resources.

(20) System Development and Acquisition--Describes the security and business continuity requirements in the systems development and acquisition life cycle.

(21) Vendor Access--Establishes the rules for vendor access to information resources, support services (Air Conditioning, Universal Power Supply, Power Distribution Unit, fire suppression, etc.), and vendor responsibilities for protection of information.

(22) Malicious Code--Describes the requirements for prevention, detection, response, and recovery from the effects of malicious code (including but not limited to viruses, worms, Trojan Horses, and unauthorized code used to circumvent safeguards.)

(h) Perimeter Security Controls. Each state agency head or his/her designated representative and information security officer shall establish a perimeter protection strategy to include some or all of the following components.

(1) DMZ (Demilitarized Zone)--The DMZ is the network area created between the public Internet and internal private network(s). This neutral zone is usually delineated by some combination of routers, firewalls, and bastion hosts. Typically, the DMZ contains devices accessible to Internet traffic, such as Web (HTTP) servers, FTP servers, SMTP (email) servers, and DNS servers.

(2) Firewall--A system designed to prevent unauthorized access to or from a private network. Firewalls can be implemented in both hardware and software, or a combination of both and are used to prevent unauthorized Internet users from accessing private networks connected to the Internet, especially Intranets. They can also regulate traffic between networks within the same state agency.

(3) Intrusion Detection System--Hardware and/or software which is installed on a network and compares network traffic and host log entries to the known and likely methods of attackers. Suspicious activities trigger administrator alarms and other configurable responses.

(4) Router--A device or, in some cases, software in a computer, that determines the next network point to which a packet should be forwarded toward its destination. The router is connected to at least two networks and decides which way to send each information packet based on its current understanding of the state of the networks to which it is connected. A router is located at any gateway where one network meets another.

(i) System Identification/Logon Banner. System identification/logon banners shall have warning statements that include the following topics:

(1) Unauthorized use is prohibited;

(2) Usage may be subject to security testing and monitoring;

(3) Misuse is subject to criminal prosecution; and

(4) No expectation of privacy except as otherwise provided by applicable privacy laws.

*§202.26. Security Incidents.*

(a) Security incidents shall be promptly investigated and documented. Security incidents shall be reported to the department within twenty-four hours if there is a substantial likelihood that such incidents are critical in nature and could be propagated to other state systems beyond the control of the state agency.

(b) If criminal action is suspected, the state agency must contact the appropriate law enforcement and investigative authorities immediately.

(c) Each state agency shall provide summary reports to the department that contain information concerning violations of security policy of which the state agency has become aware. A state agency shall not be required to report security incidents unless it reasonably believes such incidents may involve criminal activity under Texas Penal Code Chapters 33 (Computer Crimes) or 33A (Telecommunications Crimes). Reports should include:

(1) Type of activity, including but not limited to:

(A) Unwanted disruption or denial of service;

(B) Unauthorized use of a system for the processing or storage of data; and

(C) Changes made to system hardware, firmware, data or software without the state agency's effective consent.

(2) Time elapsed between initial detection of incident and containment of the security breach or full restoration of adversely affected functions, whichever is later;

(3) Description of the state agency's response to the incident; and

(4) Estimated total cost incurred by the state agency in containing the security incident or restoring adversely affected functions.

(d) Reports must be sent to the department on a monthly basis no later than nine (9) calendar days after the end of the month. Information shall be reported in the form and manner specified by the department.

(e) The department shall establish internal security procedures regarding the receipt and maintenance of information pertaining to security incidents. The department shall instruct state agencies as to the manner in which they must report such information.

*§202.27. User Security Practices.*

(a) All authorized users (including, but not limited to, state agency personnel, temporary employees, and employees of independent contractors) of the state agency's information resources, shall formally acknowledge that they will comply with the security policies and procedures of the state agency or they shall not be granted access to information resources. The state agency head or his or her designated representative will determine the method of acknowledgement and how often this acknowledgement must be re-executed by the user to maintain access to state agency information resources.

(b) Devices designated for public access shall be configured to enforce security policies and procedures without the requirement for formal acknowledgement.

(c) Each state agency head or his/her designated representative and information security officer shall establish a strategy for the use of written non-disclosure agreements to protect information from disclosure by employees and contractors prior to granting access.

(d) State agencies shall provide an ongoing information security awareness education program for all users.

(e) State agencies shall use new employee orientation to introduce information security awareness and inform new employees of information security policies and procedures.

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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Renée Mauzy
General Counsel
Department of Information Resources
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## SUBCHAPTER C. SECURITY STANDARDS FOR INSTITUTIONS OF HIGHER EDUCATION

**1 TAC §§202.70 - 202.77**

The new rules are adopted pursuant to §2054.121, Texas Government Code, which requires the repeal and readoption of rules in a manner that expressly applies to institutions of higher education, and §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

The new rules affect Texas Government Code §2054.252(a) and §2054.121.

*§202.71. Management and Staff Responsibilities.*

(a) The institution of higher education head or his or her designated representative(s) shall review and approve ownership of information resources and their associated responsibilities.

(b) The owner of an information resource, with the institution of higher education head's or his or her designated representative(s') concurrence, is responsible for classifying business functional information. Institutions of higher education are responsible for defining all information classification categories except the Confidential Information category, which is defined in Subchapter A, and establishing the appropriate controls for each.

(c) Owners, custodians, and users of information resources shall be identified, and their responsibilities defined and documented by the institution of higher education. In cases where information resources are used by more than one major business function, the owners shall reach consensus and advise the information security function as to the designated owner with responsibility for the information resources. The following distinctions among owner, custodian, and user responsibilities should guide determination of these roles:

(1) Owner Responsibilities. The owner or his or her designated representatives(s) are responsible for and authorized to:

(A) Approve access and formally assign custody of an information resources asset;

(B) Determine the asset's value;

(C) Specify data control requirements and convey them to users and custodians;

(D) Specify appropriate controls, based on risk assessment, to protect the state's information resources from unauthorized modification, deletion, or disclosure. Controls shall extend to information resources outsourced by the institution of higher education.

(E) Confirm that controls are in place to ensure the accuracy, authenticity, and integrity of data.

(F) Ensure compliance with applicable controls;

(G) Assign custody of information resources assets and provide appropriate authority to implement security controls and procedures.

(H) Review access lists based on documented security risk management decisions.

(2) Custodian responsibilities. Custodians of information resources, including entities providing outsourced information resources services to state institutions of higher education must:

(A) Implement the controls specified by the owner(s);

(B) Provide physical and procedural safeguards for the information resources;

(C) Assist owners in evaluating the cost-effectiveness of controls and monitoring; and

(D) Implement the monitoring techniques and procedures for detecting, reporting, and investigating incidents.

(3) User responsibilities. Users of information resources shall use the resources only for defined purposes and comply with established controls.

(d) The Information Security Officer. Each institution of higher education head or his or her designated representative(s) shall designate an information security officer to administer the institution of higher education information security program. The Information Security Officer shall report to executive management.

(1) It shall be the duty and responsibility of this individual to develop and recommend policies and establish procedures and practices, in cooperation with owners and custodians, necessary to ensure the security of information resources assets against unauthorized or accidental modification, destruction, or disclosure.

(2) The Information Security Officer shall document and maintain an up-to-date information security program. The information security program must be approved by the institution of higher education head or his or her designated representative(s).

(3) The Information Security Officer is responsible for monitoring the effectiveness of defined controls for mission critical information.

(4) The Information Security Officer shall report, at least annually, to the institution of higher education head or his or her designated representative(s) the status and effectiveness of information resources security controls.

(e) A review of the institution of higher education's information security program for compliance with these standards will be performed at least biennially, based on business risk management decisions, by individual(s) independent of the information security program and designated by the institution of higher education head or his or her designated representative(s).

*§202.74. Business Continuity Planning.*

(a) Business Continuity Planning covers all business functions of an institution of higher education and it is a business management responsibility. Institutions of higher education should maintain a written Business Continuity Plan so that the effects of a disaster will be minimized, and the institution of higher education will be able to either maintain or quickly resume mission-critical functions. The institution of higher education head or his or her designated representative(s) shall approve the Plan. The Plan shall be distributed to key personnel and a copy stored offsite. Elements of the Plan for information resources shall include:

(1) Business Impact Analysis to systematically assess the potential impacts of a loss of business functionality due to an interruption of computing and/or infrastructure support services resulting from various events or incidents. The analysis shall address maximum tolerable downtime for time-critical support services and resources including, but not limited to:

(A) Personnel;

(B) Facilities;

(C) Technology platforms (all computer systems);

(D) Software;

(E) Information resources security utilities;

(F) Data networks and equipment;

(G) Voice networks and equipment;

(H) Vital electronic records and/or data.

(2) Security Risk Assessment to weigh the cost of implementing preventative measures against the risk of loss from not taking action.

(3) Recovery Strategy to appraise recovery alternatives and alternative cost-estimates which shall be presented to management.

(4) Implementation, testing, and maintenance management program addressing the initial and ongoing testing and maintenance activities of the Plan.

(5) Disaster Recovery Plan--Each institution of higher education shall maintain a written disaster recovery plan for information resources. Information learned from tests conducted since the plan was last updated will be used in updating the disaster recovery plan. The disaster recovery plan will:

(A) Contain measures which address the impact and magnitude of loss or harm that will result from an interruption;

(B) Identify recovery resources and a source for each;

(C) Contain step-by-step instructions for implementing the Plan;

(D) Be maintained to ensure currency; and

(E) Be tested either formally or informally at least annually.

(b) Mission critical data shall be backed up on a scheduled basis and stored off site in a secure, environmentally safe, locked facility accessible only to authorized institution of higher education representatives.

*§202.76. Security Incidents.*

(a) Security incidents shall be promptly investigated and documented. Security incidents shall be reported to the department within twenty-four hours if the institution determines that there is a substantial likelihood that such incidents are critical in nature and could be propagated to other state systems beyond the control of the institution of higher education.

(b) If criminal action is suspected, the institution of higher education must contact the appropriate law enforcement and investigative authorities immediately.

(c) Each institution of higher education shall provide summary reports to the department that contain information concerning violations of security policy of which the institution of higher education has become aware. An institution of higher education shall not be required to report security incidents unless it reasonably believes such incidents may involve criminal activity under Texas Penal Code Chapters 33 (Computer Crimes) or 33A (Telecommunications Crimes). Reports should include:

(1) Type of activity, including but not limited to:

(A) Unwanted disruption or denial of service;

(B) Unauthorized use of a system for the processing or storage of data; and

(C) Changes made to system hardware, firmware, data or software without the institution of higher education's effective consent.

(2) Time elapsed between initial detection of incident and containment of the security breach or full restoration of adversely affected functions, whichever is later;

(3) Description of the institution of higher education's response to the incident; and

(4) Estimated total cost incurred by the institution of higher education in containing the security incident or restoring adversely affected functions.

(d) Reports must be sent to the department on a monthly basis no later than the ninth (9th) calendar day after the end of the month. Information shall be reported in the form and manner specified by the department.

(e) The department shall establish internal security procedures regarding the receipt and maintenance of information pertaining to security incidents. The department shall instruct institutions of higher education as to the manner in which they must report such information.

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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Renée Mauzy
General Counsel
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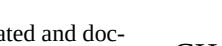

# CHAPTER 203. MANAGEMENT OF ELECTRONIC TRANSACTIONS AND SIGNED RECORDS

**1 TAC §203.1, §203.2**

The Department of Information Resources (department) adopts the repeal of 1 T.A.C. Chapter 203, §203.1 and §203.2, relating to the management of electronic transactions and signed records without changes to the proposal as published in the September 10, 2004, issue of the *Texas Register* (29 TexReg 8714).

No comments were received concerning the proposed repeal.

The repeal is adopted pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act, §2054.121, Texas Government Code, which requires the department of readopt rules for them to apply to institutions of higher education and §43.017, Business and Commerce Code, which authorizes the department to promulgate rules relating to electronic records under the Uniform Electronic Transactions Act.

Texas Government Code, Chapter 2054 and Business and Commerce Code §43.017 are affected by the repeal.

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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Renée Mauzy
General Counsel
Department of Information Resources
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## CHAPTER 203. MANAGEMENT OF ELECTRONIC TRANSACTIONS AND SIGNED RECORDS

The Department of Information Resources (department) adopts new rules in Chapter 203, §§203.1 - 203.3, 203.20 - 203.27 and 203.40 - 203.46 in their entirety, Management of Electronic Transactions and Signed Records. These new rules are adopted to comply with §2054.121, Texas Government Code, which requires the department, in coordination with the Information Technology Council of Higher Education, to review, analyze and readopt its rules to expressly make them applicable to institutions of higher education. The new rules are adopted without changes to the proposed text as published in the September 10, 2004, issue of the *Texas Register* (29 TexReg 8714) and will not be republished.

No comments were received concerning the proposed new rules.

Subchapter A, §§203.1 - 203.3 contains definitions. Subchapter B, §§203.20 - 203.27, contains the provisions for electronic transactions that apply to state agencies that are not institutions of higher education. Subchapter C, §§203.40 - 203.46, contains the provisions that apply to institutions of higher education.

## SUBCHAPTER A. DEFINITIONS

### 1 TAC §§203.1 - 203.3

The new rules are adopted under §2054.121, Texas Government Code, which requires the department to readopt rules expressly as they apply to institutions of higher education after review and coordination with the Information Technology Council of Higher Education, §2054.052(a), Texas Government Code, which authorizes the department to promulgate rules as needed to administer the Information Resources Management Act, §43.017, Business and Commerce Code, which authorizes the department to promulgate rules relating to electronic records under the Uniform Electronic Transactions Act, and §2054.060(a), Texas Government Code, which requires the department to promulgate rules relating to the use of digital signatures by state agencies.

The new rules affect Texas Government Code §§2054.052(a), 2054.121 and 2054.060(a) and Business and Commerce Code §43.0173.

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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Renée Mauzy
General Counsel
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## SUBCHAPTER B. STATE AGENCY USE OF ELECTRONIC TRANSACTIONS AND SIGNED RECORDS

### 1 TAC §§203.20 - 203.27

The new rules are adopted under §2054.121, Texas Government Code, which requires the department to readopt rules expressly as they apply to institutions of higher education after review and coordination with the Information Technology Council of Higher Education, §2054.052(a), Texas Government Code, which authorizes the department to promulgate rules as needed to administer the Information Resources Management Act, §43.017, Business and Commerce Code, which authorizes the department to promulgate rules relating to electronic records under the Uniform Electronic Transactions Act, and §2054.060(a), Texas Government Code, which requires the department to promulgate rules relating to the use of digital signatures by state agencies.

The new rules affect Texas Government Code §§2054.052(a), 2054.121 and 2054.060(a) and Business and Commerce Code §43.017.

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

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## SUBCHAPTER C. INSTITUTIONS OF HIGHER EDUCATION USE OF ELECTRONIC TRANSACTIONS AND SIGNED RECORDS

**1 TAC §§203.40 - 203.46**

The new rules are adopted under §2054.121, Texas Government Code, which requires the department to readopt rules expressly as they apply to institutions of higher education after review and coordination with the Information Technology Council of Higher Education, §2054.052(a), Texas Government Code, which authorizes the department to promulgate rules as needed to administer the Information Resources Management Act, §43.017, Business and Commerce Code, which authorizes the department to promulgate rules relating to electronic records under the Uniform Electronic Transactions Act, and §2054.060(a), Texas Government Code, which requires the department to promulgate rules relating to the use of digital signatures by state agencies.

The new rules affect Texas Government Code §§2054.052(a), 2054.121 and 2054.060(a) and Business and Commerce Code §43.017.

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

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# CHAPTER 204. INTERAGENCY CONTRACTS FOR INFORMATION RESOURCES TECHNOLOGIES

The Department of Information Resources (department) adopts new 1 T.A.C. Chapter 204, §§204.1 - 204.3, 204.10 - 204.12, and 204.30 - 204.32 in their entirety, as a portion of the rules affected by the implementation of §2054.121, Texas Government Code, Coordination with Institutions of Higher Education. The new rules are adopted without changes to the proposed text as published in the September 10, 2004, issue of the *Texas Register* (29 TexReg 8722). The text of the rules will not be republished.

No comments were received concerning the proposed new rules.

Because Subchapter B is applicable only to state agencies other than institutions of higher education, former 1 T.A.C. subsection (b)(3)(E) is no longer necessary and has been deleted from the new rule. Similarly, because Subchapter C is applicable only to institutions of higher education, former 1 T.A.C. subsection (b)(3)(F) is no longer necessary and has been deleted from the new rule. There were no other substantive changes to the rule, other than the restructuring. The new rules are structured into three subchapters. Subchapter A, §§204.1 - 204.3 are definitions. Subchapter B, §§204.10 - 204.12 contain the rules that apply only to state agencies. Subchapter C, §§204.30 - 204.32, contain the rules that apply only to institutions of higher education.

## SUBCHAPTER A. DEFINITIONS

**1 TAC §§204.1 - 204.3**

The new rules are adopted to implement Texas Government Code, §2054.121, which requires the repeal and readoption of rules in a manner that expressly applies to institutions of higher education, and Texas Government Code, §2054.052(a), which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

The new rules affect Texas Government Code, §2054.121 and §2054.052(a).

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

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For further information, please call: (512) 936-6448

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## SUBCHAPTER B. STATE AGENCY INTERAGENCY CONTRACTS

**1 TAC §§204.10 - 204.12**

The new rules are adopted to implement Texas Government Code, §2054.121, which requires the repeal and readoption of rules in a manner that expressly applies to institutions of higher education, and Texas Government Code, §2054.052(a), which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

The new rules affect Texas Government Code, §2054.121 and §2054.052(a).

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

Filed with the Office of the Secretary of State on November 8, 2004.

TRD-200406659
Renée Mauzy
General Counsel
Department of Information Resources
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Proposal publication date: September 10, 2004
For further information, please call: (512) 936-6448

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## SUBCHAPTER C. INSTITUTION OF HIGHER EDUCATION INTERAGENCY CONTRACTS

**1 TAC §§204.30 - 204.32**

The new rules are adopted to implement Texas Government Code, §2054.121, which requires the repeal and readoption of rules in a manner that expressly applies to institutions of higher education, and Texas Government Code, §2054.052(a), which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

The new rules affect Texas Government Code, §2054.121 and §2054.052(a).

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

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Renée Mauzy
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Department of Information Resources
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For further information, please call: (512) 936-6448

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## CHAPTER 206. STATE WEB SITES

**1 TAC §§206.1 - 206.5**

The Department of Information Resources (department) adopts the repeal of 1 T.A.C. Chapter 206, §§206.1 - 206.5, concerning State Web Sites without changes to the proposal as published in the September 10, 2004, *Texas Register* (29 TexReg 8725). By separate action, the department will adopt new state web site rules that identify the Web site standards applicable to state agencies other than institutions of higher education and the standards applicable to institutions of higher education.

No comments were received in response to the proposed repeal.

The repeal is adopted pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

Texas Government Code, Chapter 2054 is affected by the repeal.

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

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TRD-200406630
Renée Mauzy
General Counsel
Department of Information Resources
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For further information, please call: (512) 936-6448

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## CHAPTER 206. STATE WEB SITES

The Department of Information Resources (department) adopts new 1 T.A.C. Chapter 206, §§206.1 - 206.3, 206.50 - 206.55 and 206.70 - 206.75 in their entirety, as a portion of the rules affected by the implementation of §2054.121, Texas Government Code, Coordination with Institutions of Higher Education. Sections 206.1 - 206.3, 206.50 - 206.55, and 206.70 - 206.75 are adopted without changes to the text as published in the September 10, 2004, issue of the *Texas Register* (29 TexReg 8725). The text of the rules will not be republished.

No comments were received concerning the proposed new rules.

In new Chapter 206, §206.55(a) (for state agencies) and §206.75(a) (for institutions of higher education) adopt the Texas State Library and Archive Commission standards for use of metatags, §206.55(b)(1)(B) ( for state agencies), and §206.75(b)(1)(B) (for institutions of higher education) require a link to the Texas Homeland Security Web site, and §206.1(22) updates the standards for transaction risk assessments to those described in Part 2: Risks Pertaining to Electronic Transactions and Signed Records in the "The Guidelines for the Management of Electronic Transactions and Signed Records" available at §206.53(a) (for state agencies) and §206.73(a) (for institutions of higher education) require a link to the privacy and security policy from the home page or from a "site policies" page. This change was made to potentially reduce the number of links required. Other changes to this section of the rules clarify language and correct grammar. Section 206.52 (for state agencies) and §206.72 (for institutions of higher education) add a recommendation that state agencies and institutions of higher education provide translations of site content into the primary language(s) of people who use the Web site. This recommendation is made to facilitate usability of state Web sites by people with limited English proficiency. Section 206.54(3)(A) (for state agencies) and §206.74(3)(A) (for institutions of higher education) discourage posting information on state Web sites that might assist terrorists or other malevolent actors in exploiting, creating or enhancing information technology vulnerabilities. Adoption of this provision should create awareness at state agencies and institutions of higher education that consideration should be given, before posting information on the Web site, as to whether the information might provide an advantage to terrorists or other bad actors.

The new rules are structured into three subchapters. Subchapter A, §§206.1 - 206.3 are definitions. Subchapter B, §§206.50 - 206.55 contains the rules that apply only to state agencies that are not institutions of higher education. Subchapter C, §§206.70 - 206.75, contains the rules that apply only to institutions of higher education.

## SUBCHAPTER A. DEFINITIONS

**1 TAC §§206.1 - 206.3**

The new rules are adopted in accordance with §2054.121, Texas Government Code, which requires the repeal and readoption of

rules in a manner that expressly applies to institutions of higher education, and §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

The new rules affect Texas Government Code §2054.121 and §2054.052(a).

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

Filed with the Office of the Secretary of State on November 8, 2004.

TRD-200406631
Renée Mauzy
General Counsel
Department of Information Resources
Effective date: November 28, 2004
Proposal publication date: September 10, 2004
For further information, please call: (512) 936-6448

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## SUBCHAPTER B. STATE AGENCY WEB SITES

**1 TAC §§206.50 - 206.55**

The new rules are adopted in accordance with §2054.121, Texas Government Code, which requires the repeal and readoption of rules in a manner that expressly applies to institutions of higher education, and §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

The new rules affect Texas Government Code §2054.121 and §2054.052(a).

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

Filed with the Office of the Secretary of State on November 8, 2004.

TRD-200406632
Renée Mauzy
General Counsel
Department of Information Resources
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For further information, please call: (512) 936-6448

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## SUBCHAPTER C. INSTITUTION OF HIGHER EDUCATION WEB SITES

**1 TAC §§206.70 - 206.75**

The new rules are adopted in accordance with §2054.121, Texas Government Code, which requires the repeal and readoption of rules in a manner that expressly applies to institutions of higher education, and §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

The new rules affect Texas Government Code §2054.121 and §2054.052(a).

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

Filed with the Office of the Secretary of State on November 8, 2004.

TRD-200406634
Renée Mauzy
General Counsel
Department of Information Resources
Effective date: November 28, 2004
Proposal publication date: September 10, 2004
For further information, please call: (512) 936-6448

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## CHAPTER 208. COMMUNICATIONS WIRING STANDARDS

**1 TAC §208.1, §208.2**

The Department of Information Resources (department) adopts the repeal of 1 T.A.C. Chapter 208, §208.1 and §208.2, relating to communication wiring standards without changes to the proposal as published in the September 10, 2004, *Texas Register* (29 TexReg 8732). By separate action, the department will publish the adoption of new communication wiring standards rules that identify the standards applicable to state agencies other than institutions of higher education and the standards applicable to institutions of higher education.

No comments were received concerning the proposed repeal.

The repeal is adopted pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

Texas Government Code, Chapter 2054 is affected by the repeal.

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 November 8, 2004.

TRD-200406661
Renée Mauzy
General Counsel
Department of Information Resources
Effective date: November 28, 2004
Proposal publication date: September 10, 2004
For further information, please call: (512) 936-6448

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## CHAPTER 208. COMMUNICATIONS WIRING STANDARDS

The Department of Information Resources (department) adopts new 1 T.A.C. Chapter 208, §§208.1 - 208.3, 208.10, and 208.20 in their entirety, as a portion of the rules affected by the implementation of §2054.121, Texas Government Code, Coordination with Institutions of Higher Education. Sections 208.1 - 208.3, 208.10, and 208.20 are adopted without changes to the text as published in the September 10, 2004, issue of the *Texas Register* (29 TexReg 8732). The text of the rules will not be republished.

No comments were received concerning the proposed new rules.

The new rules are structured into three subchapters. Subchapter A, §§208.1 - 208.3 are definitions. Subchapter B, §208.10 contains the rule that applies only to state agencies. Subchapter C, §208.20 contains the rule that applies only to institutions of higher education.

### SUBCHAPTER A. DEFINITIONS

**1 TAC §§208.1 - 208.3**

The new rules are adopted pursuant to §2054.121, Texas Government Code, which requires the repeal and readoption of rules in a manner that expressly applies to institutions of higher education, and §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

The new rules affect Texas Government Code §2054.121 and §2054.052(a).

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

Filed with the Office of the Secretary of State on November 8, 2004.

TRD-200406662
Renée Mauzy
General Counsel
Department of Information Resources
Effective date: November 28, 2004
Proposal publication date: September 10, 2004
For further information, please call: (512) 936-6448

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### SUBCHAPTER B. WIRING STATE AGENCY BUILDINGS

**1 TAC §208.10**

The new rule is adopted pursuant to §2054.121, Texas Government Code, which requires the repeal and readoption of rules in a manner that expressly applies to institutions of higher education, and §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

The new rule affects Texas Government Code §2054.121 and §2054.052(a).

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

Filed with the Office of the Secretary of State on November 8, 2004.

TRD-200406663
Renée Mauzy
General Counsel
Department of Information Resources
Effective date: November 28, 2004
Proposal publication date: September 10, 2004
For further information, please call: (512) 936-6448

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### SUBCHAPTER C. WIRING INSTITUTION OF HIGHER EDUCATION BUILDINGS

**1 TAC §208.20**

The new rule is adopted pursuant to §2054.121, Texas Government Code, which requires the repeal and readoption of rules in a manner that expressly applies to institutions of higher education, and §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

The new rule affects Texas Government Code §2054.121 and §2054.052(a).

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

Filed with the Office of the Secretary of State on November 8, 2004.

TRD-200406664
Renée Mauzy
General Counsel
Department of Information Resources
Effective date: November 28, 2004
Proposal publication date: September 10, 2004
For further information, please call: (512) 936-6448

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# TITLE 4. AGRICULTURE

## PART 4. OFFICE OF THE STATE ENTOMOLOGIST

## CHAPTER 71. BEES

### SUBCHAPTER A. GENERAL PROVISIONS

**4 TAC §71.7**

The Office of the State Entomologist adopts the amendments to Texas Administrative Code, Title 4, Part 4, Chapter 71, Subchapter A, §71.7, relating to Honey Bees. The amendments to §71.7 are adopted without changes from the proposed text as published in the October 1, 2004, issue of the *Texas Register* (29 TexReg 9300).

The amended rule discontinues the term of quarantined county and replaces it with detected county. This change is made as a result of over 75% of Texas counties having Africanized Honey Bees detected in the local bee populations. This change will provide increased mobility for bee hives while continuing to protect the general public.

There were no comments received as a result of the *Texas Register* publication notice.

Statutory Authority: Texas Agriculture Code, Chapter 131, §131.002

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 November 3, 2004.

TRD-200406601
Edward A. Hiler
Director, Texas Agricultural Experiment Station
Office of the State Entomologist
Effective date: November 23, 2004
Proposal publication date: October 1, 2004
For further information, please call: (979) 845-4759

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# TITLE 10. COMMUNITY DEVELOPMENT

## PART 6. OFFICE OF RURAL COMMUNITY AFFAIRS

### CHAPTER 255. TEXAS COMMUNITY DEVELOPMENT PROGRAM

### SUBCHAPTER A. ALLOCATION OF PROGRAM FUNDS

**10 TAC §§255.1, 255.2, 255.4, 255.5, 255.7, 255.9, 255.15, 255.16**

The Office of Rural Community Affairs (Office) adopts amendments to §§255.1, 255.2, 255.4, 255.5, 255.7, 255.9 and new §255.15 and §255.16, concerning the allocation of Community Development Block Grant (CDBG) non-entitlement area funds under the Texas Community Development Program (TCDP). Sections 255.1, 255.5, 255.7, 255.9, 255.15, and 255.16 are without changes to the proposed text as published in the August 27, 2004, issue of the *Texas Register* (29 TexReg 8196). Section 255.2 and §255.4 are adopted with multiple changes to the text as published.

The amendments establish the standards and procedures by which the Office will allocate and distribute 2005 and 2006 fiscal years' funds under the community development fund and planning and capacity building fund and fiscal year 2005 funds under the disaster relief fund, Texas capital fund, and colonia fund. The two new sections establish the standards and procedures by which the Office will allocate and distribute 2005 and 2006 fiscal years' funds under the community development supplemental fund and non-border colonia fund. The amendments are being adopted to make changes to the application and selection criteria for the program fund categories and to establish application and selection criteria for the two new sections.

Written comments were received from two persons. One commenter stated that under the proposed Project Impact scoring in §255.2(f) a water or sewer improvement project for line replacement could receive a lower score than a project providing surface pavement on unpaved streets. The commenter further stated that a possible higher score for a street paving project over a water or sewer line replacement project seemed contrary to the TCDP historical emphasis for water, sewer, and housing activities. The Office considered these opinions but did not make any changes to the proposed Project Impact scoring because the possibility that a street paving project could receive a higher score than a water or sewer line replacement project has existed for ten or more years. The Office believes there are some situations where a street paving project should score higher than a water or sewer project.

The same commenter also stated that the language in §255.2(f)(4)(B)(vii) should be clarified if the installation of septic tanks under this clause is for the first-time installation of septic tanks as opposed to the replacement of existing septic tanks. The commenter further stated that the score assigned under this clause should not be higher than the score for a sewer line replacement project unless the septic tanks would be installed for the first-time. The Office agrees with these statements and two clauses under §255.2(f)(4)(B) have been revised from the proposed language. Clause (vii) has been revised to the following: Installation of septic tanks or on-site sewer facilities to provide first-time sewer service--168 points. Clause (xvi) has been changed to clause (xv) and has been revised to the following: Replacement of sewer lines with new sewer lines to address sewer system overflows, blocked sewer lines, or inflow and infiltration problems or septic tank replacement to address problems without independent quantifiable information or without a TCEQ letter documenting the problems still exist--156 points.

The second commenter recommended a number of revisions to the proposed Project Impact scoring in §255.2(f) and the proposed Planning Effort scoring in §255.4(d)(3)(B). The following comments are from the second commenter.

The commenter stated that the proposed scores for first-time public water service based on the number of residential service connections under §255.2(f)(4)(A)(i), (iii) and (vi) should not be based on the number of residential service connections but instead be based on the cost per residential service connection with a scale awarding higher points for a lower cost per residential service connection. The Office does not agree with these comments and believes that the number of first-time residential service connections is a better indication for project impact. The language in clauses (i), (iii) and (vi) has not been changed and the Office will adopt these clauses with no changes.

The commenter made a statement and recommendation concerning the language in §255.2(f)(4)(A)(ix) - (xi) and (xiii) - (xvii). The points assigned under these clauses were dependent upon the dates when water system inspection letters from the Texas Commission of Environmental Quality (TCEQ) were issued. The commenter stated that TCEQ does not typically inspect small rural systems on an annual basis and suggested that a more applicable standard is that the condition or situation must be cited in the most recent TCEQ letter, which will incorporate any previous concerns and/or violations. The Office has taken these comments into consideration and clauses (ix) - (xi) and (xiii) -

(xvii) have been revised to delete references to dates for TCEQ water inspection letters. Clause (ix) is adopted to read: Water supply/treatment improvements that are still needed to meet state minimum standards cited in the most recent TCEQ water system inspection letter--165 points. Clause (x) is adopted to read: Water storage improvements that are still needed to meet state minimum standards cited in the most current TCEQ water system inspection letter--164 points. Clause (xi) is adopted to read: Replacing undersized water lines and removing the presence of lead fixtures/contamination to meet state minimum water pressure standards cited in the most recent TCEQ water system inspection letter and the conditions cited still exist--164 points. Clause (xiii) is adopted to read: Water storage improvements to meet state minimum standards, documented through independent quantifiable information, and the conditions still exist--163 points. Clause (xiv) is adopted to read: Water supply/treatment improvements to meet state minimum standards (including federal standards as implemented by the state), documented through independent quantifiable information, and the conditions still exist--163 points. Clause (xv) is adopted to read: Replacement of water lines with larger diameter water lines to meet minimum state standards for water pressure and/or number of connections cited in the most recent TCEQ water system inspection letter, and the conditions cited still exist--163 points. Clause (xvi) is adopted to read: Replacing undersized water lines and removing the presence of lead fixtures/contamination to meet state minimum water pressure standards and documented through independent quantifiable information, and the conditions still exist--162 points. Clause (xvii) is adopted to read: Replacement of water lines with larger diameter water lines to meet minimum state standards for water pressure and/or number of connections and documented through independent quantifiable information, and the conditions still exist--161 points.

The commenter stated that water supply and treatment is a serious concern that merits a higher Project Impact score higher than 165 points and recommended that the score be increased to 170 points. The Office disagrees with this recommendation and has not changed the score for water supply and treatment activities.

The commenter recommended that score of 150 points under §255.2(f)(4)(A)(xxi) be increased to 152 points because the Office is encouraging applicants to install larger lines to get the additional points when the replacement of badly deteriorated lines of the same size might be sufficient. The Office disagrees with this recommendation and has not changed the score for replacement of water lines with the same size water lines.

The commenter stated that the proposed scores for first-time public sewer service based on the number of residential service connections under §255.2(f)(4)(B)(i), (vi) and (v) should not be based on the number of residential service connections but instead be based on the cost per residential service connection with a scale awarding higher points for a lower cost per residential service connection. The Office does not agree with these comments and believes that the number of first-time residential service connections is a better indication for project impact. The language in clauses (i), (iv) and (v) has not been changed and the Office will adopt these clauses with no changes.

The commenter made a statement and recommendation concerning the language in §255.2(f)(4)(B)(viii) and (xi). The points assigned under these clauses were dependent upon the dates when sewer system violation letters from the Texas Commission of Environmental Quality (TCEQ) were issued. The commenter stated that TCEQ does not typically inspect small rural systems on an annual basis and suggested that a more applicable standard is that the condition or situation must be cited in the most recent TCEQ letter, which will incorporate any previous concerns and/or violations. The Office has taken these comments into consideration and clause (viii) has been revised to delete references to dates for TCEQ sewer system violation letters. Clause (viii) is adopted to read: Applicant is addressing deficiencies cited in the most recent Texas Commission on Environmental Quality (TCEQ) sewer system notice of violations letter and the conditions cited still exist--167 points. The proposed clause (xi) has been deleted and will not be adopted. All clauses in subparagraph (B) following the deleted clause (xi) have been re-numbered in this adoption notice.

The commenter made the following statements and recommendations concerning the language in §255.2(f)(4)(B)(x). Applicants in many rural communities are hard pressed for finances. A major problem with a sewer system can be a major financial burden and often the only viable source for funding these improvements are from the TCDP. It is unreasonable to restrict the awarding of points based upon the issuance date of a TCEQ letter. TCEQ does not always inspect small rural systems on an annual basis. The 90% level of treatment capacity is too high. At this point these systems should be under construction to address the capacity problems of the treatment plant. A more reasonable level is 70% when the operator needs to begin design to correct plant capacity deficiencies. The Office disagrees with these statements because the TCEQ has not in the past issued any letters that the Office is aware of that recommend actions for a sewer treatment plant that has reached 70% of capacity. Clause (x) is adopted with the following revised language: Applicant is expanding the sewer treatment plant in response to the most recent TCEQ letter stating that sewer system has reached 90% of treatment capacity and the conditions cited still exist--166 points.

The commenter recommended that the language in §255.2(f)(4)(B)(xii) be deleted citing the comments made on clause (x). Again, the Office disagrees with this recommendation because the TCEQ does issue letters citing when a sewer treatment plant has reached 75% of its capacity. For clarification only, clause (xii) has been re-designated as clause (xi) and is adopted with the following language: Applicant is expanding the sewer treatment plant in response to the most recent TCEQ letter stating that sewer system has reached 75% of treatment capacity and the conditions cited still exist--164 points.

The commenter recommended that the score for the drainage activity described in §255.2(f)(6)(B)(i) be increased from 160 points to 170 points. The maximum Project Impact score of 160 points for drainage activities has already been established in the 2005 Action Plan that the Office has presented at twenty-one public hearings held during 2004. The Office cannot accommodate this recommendation without conducting additional public hearings on this proposed recommendation.

The commenter recommended that the score for the flood control activity described in §255.2(f)(6)(C)(i) be increased from 160 points to 170 points. The maximum Project Impact score of 160 points for flood control activities has already been established in the 2005 Action Plan that the Office has presented at twenty-one

public hearings held during 2004. The Office cannot accommodate this recommendation without conducting additional public hearings on this proposed recommendation.

Concerning the Proposed Planning Effort scoring in §255.4(d)(3)(B)(xiv), the commenter stated that for small rural communities, the expense of a city manager, fulltime planner, or part-time planner is excessive. Often in small rural communities the primary city administrative person is the city secretary. The omission of the city secretary position negatively impacts the ability of small rural communities from participating in the planning process. The Office agrees with the comments and clause (xiv) has been revised for adoption of the following: Staff Capacity--Applicant has demonstrated staff capacity (up to 3 points).

The commenter recommended that §255.4(d)(3)(B)(xv) be revised because many smaller rural communities need to be encouraged through the planning process to create and support some local planning organization. It is impractical for smaller to cities to have numerous boards and committees, but are certainly capable of having at least a single group to foster local planning efforts. The Office agrees with the comments and clause (xv) has been revised for adoption of the following: Organization for Planning (up to 3 points total)--One of the following exist within the applicant's jurisdiction: Planning and Zoning Commission, Planning Commission, Zoning Commission, Zoning Board of Adjustment, Citizens Advisory Committee, or other local group involved.

The commenter took exception to the scoring proposed under §255.4(d)(3)(B)(xvii) and stated that the primary purpose of this fund is to promote planning and to assist rural communities to prepare and utilize planning tools such as a base map, existing land use map, and future land use map. Providing "first-time" mapping or updating old paper maps with digital versions should be a funding priority. Lets not penalize cities for not having what this program fund is designed to provide. The Office agrees with the comments and clause (xvii) and clause (xviii) will not be adopted. Clauses following these deleted clauses have been re-numbered in the adoption. Clause (xx), will be adopted as clause (xviii) and revised to reduce the possible score reduction from 9 points to 6 points. Clause (xviii) will be adopted to say: Adjustments (Subtract up to 6 points): Applicant has zoning and no land use and future land use maps and requests no base studies. (subtract 3 points); and zoning passed before land use plan accomplished and no indication to do land use and/or no zoning requested (subtract 3 points).

For proposed §255.4(d)(3)(B)(xv) the commenter recommended that the clause be deleted and stated that small rural cities do not have the capacity to implement a code enforcement program. Often cities of 10,000 or more in population do not have this type of program and it is unreasonable to penalize smaller and poorer cities with planning needs that do not have an active code enforcement program. The Office disagrees with the recommendation to delete this clause but clause (xxv) will be adopted as clause (xxiii) and the points will be reduced from 3 points to 2 points. Clause (xxiii) is revised and adopted to read as: Applicant reports it has an active code enforcement program (up to 2 points).

For proposed §255.4(d)(3)(B)(xxvi) the commenter stated that planning is not simply about dealing with the effects of growth; it is also concerned with confronting decline or stagnation. Many, if not most, rural communities in Texas are facing this later trend; this clause penalizes the very communities that Office of Rural Community Affairs was created to assist. Demographic growth, decline, or stagnation all present unique and pressing issues for a community that should be given equal consideration in the scoring process. This clause was always meant to include population growth or population decline. Clause (xxvi) will be adopted as clause (xxiv) and changed to clarify that population increase or decrease are considered. Clause (xxiv) is revised to read: The population change (up to a total of 10 points). The population change either positive or negative from 1990 to present is between 5% and 10% (2 points); greater than 10% but less or equal to 15% (4 points); greater than 15% but less or equal to 20% (6 points); greater than 20% but less or equal to 25% (8 points); or greater than 25% (10 points).

For proposed §255.4(d)(3)(B)(xxxv) the commenter recommended that the clause be deleted and stated that match is already required and is based on the size of the community. It is not clear what additional over-match is intended to accomplish because the planning contracts are highly specific regarding what activities are required; the vast majority of past grantees have been able to meet or exceeded their contract requirements using the grant funds plus their required match. Again, this factor penalizes smaller and poorer communities that are already struggling to come up with their required 5% or 10% cash match and rewards larger and richer ones that can afford to over-match (and over-pay) for the same required product planning is not simply about dealing with the effects of growth; it is also concerned with confronting decline. The Office disagrees with the recommendation to delete this clause, but clause (xxxv) will be adopted as clause (xxxiii) and the points will be reduced from 10 points to 5 points. Clause (xxxiii) and subclauses are revised and adopted to read as: Commitment, as exhibited by match, based on 2000 Census (up to 5 points). Applicant is contributing the following percentage more than required over the base match amount for its population level: (I) less than 5% (0 points); (II) 5% but less than 10% more than required (2 points); (III) 10% but less than 15% more than required (3 points); (IV) 15% but less than 20 more than required (4 points); or (V) At least 20% more than required (5 points).

The commenter recommended that proposed §255.4(d)(3)(B)(xxxvi) concerning scoring based on the cost per beneficiary be deleted. The Office agrees with the comment and the proposed clause (xxxvi) will not be adopted.

The commenter stated that the meaning of proposed §255.4(d)(3)(B)(xxxviii) was unclear. Commenter recommended that the meaning of significant events should be provided. Clause (xxxviii) is adopted as clause (xxxv) and revised to say: Special Impact. Whether some significant event will occur in the region that may impact ability to provide services, such as a factory locating in the area that will increase jobs by 10 percent, the announced closure of an employer that will reduce jobs by 10 percent, declared natural disaster, or announcement of construction of a major interstate highway in the area (up to 5 points).

Since some of the clauses included under the proposed amendments to §255.4(d)(3)(B) have been deleted from this adoption notice, the Office has re-assigned the points originally assigned to the deleted clauses. Clause (vi), which was originally assigned 5 points will be adopted with up to 10 points available. Clause (x), which was originally assigned 10 points will be adopted with up to 15 points available. Clause (xv), which was originally assigned 3 points will be adopted with up to 5 points available. Clause (xxx), which was originally assigned 3 points

will be adopted with up to 8 points available. Clause (xxxi), which was originally assigned 5 points will be adopted with up to 10 points available.

No written comments were received on the amendments to §§255.1, 255.5, 255.7, 255.9, or for the new §255.15 and §255.16.

The amendments and new sections are adopted under §487.052 of the Government Code, which provides the Office of Rural Community Affairs with the authority to adopt rules implementing its statutory responsibilities.

The Texas Administrative Code, Title 10, Part 6, Chapter 255, is affected by the adoption of the amendments to §§255.1, 255.2, 255.4, 255.5, 255.7, 255.9, and the adoption of new §255.15 and §255.16.

*§255.2. Community Development Fund.*

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

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

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

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

(c) Allocation plan.

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

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

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

(C) population--30%

(D) number of unemployed persons--10%

(E) unemployment rate--10%

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

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

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

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

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

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

(3) Each regional review committee may allocate approximately 8%, or a greater or lesser percentage, of its community development fund allocation to housing projects proposed in and for that region. Under a housing allocation, the highest ranked applications

for housing activities, regardless of the position in the overall ranking, would be selected to the extent permitted by the housing allocation level. If the regional review committee allocates a percentage the region's funds to housing and applications conforming to the maximum and minimum amounts are not received to use the entire housing allocation, the remaining funds may be used for other eligible activities.

(d) Selection procedures.

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) per capita income--20

(C) unemployment rate--10

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*(vi)* projects which include self-help methods (volunteer labor, donated materials, donated equipment, etc.) to significantly reduce the project cost or to significantly increase the proposed improvements are given additional consideration;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*(iv)* The applicant's timely response to audit findings on previous TCDP contracts.

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

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

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

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

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

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

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

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

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

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

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

(4) Water, sewer and housing activities--145 to 175 points.

(A) Water activities.

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

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

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

*(iv)* Applicant is addressing deficiencies cited in an active Agreed Order/Enforcement Order with fines included--173 points

*(v)* Applicant is addressing deficiencies cited in an active Agreed Order/Enforcement Order without fines included--170 points

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

*(vii)* Addressing drought conditions through additional water supply or water storage and water system is on the Texas Commission on Environmental Quality (TCEQ) drought watch list , and the supply problems are not related to substantial water loss from deteriorated lines--168 points

*(viii)* First-time water service to an area through a privately-owned for-profit utility--166 points

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

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

*(xi)* Replacing undersized water lines and removing the presence of lead fixtures/contamination to meet state minimum water pressure standards cited in the most recent TCEQ water system inspection letter and the conditions cited still exist--164 points

*(xii)* Addressing drought conditions by replacing water lines that contribute to a significant loss of water supply; provided the water supply loss is documented by the applicant and the water system is on the current Texas Commission on Environmental Quality (TCEQ) drought watch list--164 points

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

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

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

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

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

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

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

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

*(xxi)* Replacement of water lines with the same diameter size water lines--150 points

*(xxii)* Water service problems associated with written complaints--149 points

*(xxiii)* Other eligible water activities--145 points

(B) Sewer activities.

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

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

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

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

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

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

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

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

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

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

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

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

*(xiii)* Replacement of sewer lines with new sewer lines to address sewer system overflows, blocked sewer lines, or inflow and infiltration problems causing unauthorized discharges or septic tank replacement to address problems based on independent quantifiable information--160 points

*(xiv)* Replacement of lift stations with new lift stations to address sewer system unauthorized discharges--160 points

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

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

*(xvii)* New sewer treatment plant or expansion of the existing sewer treatment plant without independent quantifiable information or without a TCEQ letter documenting the problems still exist--154 points

*(xviii)* Sewer service problems associated with written complaints--149 points

*(xix)* Other eligible sewer activities--145 points

(C) Housing activities.

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

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

*(iii)* Construction of new housing, when eligible, for low and moderate income persons--170 points

*(iv)* Provision of direct assistance to facilitate and expand homeownership among persons of low and moderate income--170 points

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

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

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

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

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

*(x)* Other eligible housing activities--145 points

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

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

(A) Street paving activities.

*(i)* Installation of road base, asphalt or concrete surface pavement, and concrete curb and gutter on existing unpaved streets--160 points

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

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

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

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

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

*(vii)* Construction of new streets that include installation of road base and asphalt or concrete surface pavement--151 points

*(viii)* Installation of asphalt or concrete surface pavement on existing unpaved streets--149 points

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

*(x)* Reconstruction of existing paved streets--140 points

*(xi)* Other eligible street paving activities--130 points

(B) Drainage activities.

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

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

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

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

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

*(vi)* Other eligible drainage activities--130 points

(C) Flood control activities.

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

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

*(iii)* Reconstruction of existing flood control structures--150 points

*(iv)* Clearance of obstructions to flood control structures--140 points

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

(D) Handicapped accessibility activities.

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

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

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

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

(A) Fire protection activities.

*(i)* Purchasing fire fighting vehicles, ambulance or EMS vehicle for fire department use--145 points

*(ii)* Construction of a new fire station and fire fighting vehicles and equipment--140 points

*(iii)* Purchasing fire fighting equipment for fire department staff--137 points

*(iv)* Construction of a new fire station only--135 points

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

(B) Health clinic activities.

*(i)* Construction of a new health clinic building--145 points

*(ii)* Rehabilitation or expansion of an existing health clinic building--140 points

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

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

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

*(i)* Construction of a new publicly owned and operated facility--145 points

*(ii)* Rehabilitation or expansion of an existing facility--140 points

*(iii)* Purchase of equipment related to the existing facility such as heating and cooling equipment--135 points

*(iv)* Other eligible facility activities--125 points

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

(A) Community center activities.

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

*(ii)* Construction of a new community center building that will provide only recreation activities--130 points

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

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

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

(B) Senior citizen center activities.

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

*(ii)* Construction of a new senior center building that will provide only recreation activities--130 points

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

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

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

(C) Social service center activities.

*(i)* Construction of a new building to provide first-time services to an area--135 points

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

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

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

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

(A) Demolition/clearance activities.

*(i)* Addressing condemnation activities, eliminating vacant hazardous structures, or eliminating vacant structures used for illegal activities--135 points

*(ii)* Addressing neighborhood beautification activities--130 points

*(iii)* Addressing clearance of vacant lots only--120 points

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

(B) Code enforcement activities.

*(i)* Addressing condemnation activities, eliminating vacant hazardous structures, or eliminating vacant structures used for illegal activities--135 points

*(ii)* Addressing neighborhood beautification activities--130 points

*(iii)* Addressing clearance of vacant lots only--120 points

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

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

(A) Gas facility activities.

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

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

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

*(iv)* Replace existing gas lines for a privately-owned for-profit utility to improve service--115 points

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

(B) Electrical facility activities.

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

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

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

*(iv)* Replace existing electric lines for a privately-owned for-profit utility to improve service--115 points

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

(C) Solid waste disposal activities.

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

*(ii)* Construction of a transfer station with necessary eligible equipment and recycling service--127 points

*(iii)* Activities that include landfill equipment, or transfer station equipment, or site improvements--124 points

*(iv)* Acquisition of property for a landfill site or transfer station site and minimal site improvements--120 points

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

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

(12) Jails and detention facility activities--105 to 125 points.

(A) Jail facility activities.

*(i)* Construction of a new jail--125 points

*(ii)* Construction of a new police substation in a documented high-crime area--125 points

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

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

(B) Detention facility activities.

*(i)* Construction of a new juvenile detention facility--125 points

*(ii)* Construction of a new adult detention facility--123 points

*(iii)* Rehabilitation of an existing detention facility--115 points

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

(13) All other eligible activities--85 to 115 points.

(A) Park activities.

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

*(ii)* Improvement to an existing park--105 points

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

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

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

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

*§255.4. Planning/Capacity Building Fund.*

(a) General provisions. This fund is intended to provide an opportunity for units of general local government to prepare comprehensive community development plans, develop strategies, assess needs, and build or improve local capacity to undertake future community development projects or to prepare other needed planning elements. Eligible units of general local government are to be the direct recipients of planning contracts. Units of general local government may submit one application for planning funds annually if all previous planning/capacity building contracts with the Office have been totally reimbursed by the Office.

(1) A cash match equal to or greater than 20% of the total TCDP funds requested is required of all applicants having a population over 5,000, a cash match equal to or greater than 15% of the total

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) Unemployment rate--up to 10 points

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

(A) Program priority (up to 50 points). An applicant chooses its own priorities under this scoring factor. All activities are weighted at ten points apiece. An applicant receives 50 points for its first five priorities. Base studies (base mapping, housing, land use, population components) are recommended for those who lack these updated studies. An applicant is not limited to requesting only its first five priorities. It may also request funds for activities viewed as necessary, but no additional points would be available for these activities. Applicants with fewer than five priorities or wishing to accomplish fewer than five activities receive point consideration for efficient use of grant funds under "Planning Strategy and Products" described in the most recent application guide for this fund.

(B) Areawide proposals (up to 50 points). An applicant must propose to conduct all activities described in its application throughout the entire jurisdiction of the applicant to receive the maximum 50 points. An applicant proposing target area planning receives

zero points. County applicants with identifiable, unincorporated communities qualify for these points provided that incorporation or other organization of the unincorporated communities is being considered as an option.

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

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

*(i)* An applicant which has not previously received a planning/capacity building contract or an applicant which has received a planning/capacity building fund contract prior to the 1995 program year and has not received any subsequent planning/capacity building fund contracts--50 points.

*(ii)* An applicant which has received previous planning/capacity building funding and demonstrates that at least three previous planning recommendations have been implemented, i.e., funds from any source have been spent to implement recommendations included in the plans--40 points.

*(iii)* An applicant which has participated in the program established under this section and demonstrates implementation of some of the planning recommendations, regardless of the source of funding, or an applicant which has received previous planning/capacity building funding but demonstrates that conditions have changed to warrant new planning for the same activities--20 points.

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

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

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

*(I)* Needs clearly identified by priority; and

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

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

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

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

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

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

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

*(viii)* Applicant's resolution specifically names activities for which it is applying (5 points);

*(ix)* Applicant is applying for planning only; no construction activities proposed for the 2005 - 2006 TCDP (3 points);

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

*(I)* Originally submitted application describes eligible activities;

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

*(III)* Originally submitted application addresses identified needs;

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

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

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

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

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

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

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

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

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

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

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

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

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

*(xv)* Organization for Planning (to 5 points total)--One of the following exist within the applicant's jurisdiction: Planning and Zoning Commission, Planning Commission, Zoning Commission, Zoning Board of Adjustment, Citizens Advisory Committee, or other local group involved;

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

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

*(xviii)* Adjustments (Subtract up to 6 points): Applicant has zoning and no land use and future land use maps and requests

no base studies. (subtract 3 points); and zoning passed before land use plan accomplished and no indication to do land use and/or no zoning requested (subtract 3 points);

*(xix)* Applicant has at least two of the following codes or ordinances passed since 1980, according to the original application Mobile Home, Minimum Standards-Housing, Flood Plain, Dangerous Structures, and Fair Housing (5 points);

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

*(xxi)* Applicant has both a property and sales tax (5 points);

*(xxii)* Applicant has been successful in collecting an average of 95% or more of its property taxes for the two years--2002 and 2003 (per application) (3 points);

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

*(xxiv)* The population change (up to a total of 10 points). The population change either positive or negative from 1990 to present is between 5% and 10% (2 points); greater than 10% but less or equal to 15% (4 points); greater than 15% but less or equal to 20% (6 points); greater than 20% but less or equal to 25% (8 points); or greater than 25% (10 points);

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

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

*(xxvii)* Applicant has applied for federal or state funds (other than TCDP) in the last three years or is currently applying. (3 points);

*(xxviii)* Applicant is specifically requesting funding for a Capital Improvement Program in proper implementation sequence or has indicated in the application that a capital improvement programming process is routinely accomplished (3 points);

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

*(xxx)* Applicant is in a Council of Government region which had no recipients of any kind of TCDP planning funds during the previous biennial program years (8 points);

*(xxxi)* Applicant is requesting fewer than five priority activities and is requesting no more than the dollar amount prescribed in the matrix and no Special Activities requested or applicant is requesting only Special Activities and it is apparent that they are urgently needed from the application (10 points);

*(xxxii)* Applicant is again requesting planning funds according to the matrix after competing unsuccessfully last competition, according to the Summary Form; or Applicant has a population shown on Table 2 of the application of at least 200 but less than or equal to 500 (5 points);

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

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

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

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

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

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

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

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

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

*(xxxvii)* Applicant has never received a TCDP grant and the application would lead one to believe that the project will be completed successfully and the plans implemented (5 points).

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 November 3, 2004.

TRD-200406596
J. Randel Hill
Acting Executive Director
Office of Rural Community Affairs
Effective date: November 23, 2004
Proposal publication date: August 27, 2004
For further information, please call: (512) 936-6710

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# TITLE 16. ECONOMIC REGULATION

## PART 1. RAILROAD COMMISSION OF TEXAS

### CHAPTER 3. OIL AND GAS DIVISION

**16 TAC §§3.6, 3.9, 3.26, 3.28, 3.34, 3.36, 3.46, 3.49, 3.52, 3.55, 3.56, 3.81, 3.84, 3.93, 3.95, 3.97, 3.98, 3.106**

The Railroad Commission of Texas adopts amendments to §§3.6, 3.9, 3.26, 3.28, 3.34, 3.36, 3.46, 3.49, 3.52, 3.55, 3.56, 3.81, 3.84, 3.93, 3.95, 3.97, 3.98, and 3.106, relating to Application for Multiple Completion; Disposal Wells; Separating

Devices, Tanks, and Surface Commingling of Oil; Potential and Deliverability of Gas Wells To Be Ascertained and Reported; Gas To Be Produced and Purchased Ratably; Oil, Gas, or Geothermal Resource Operation in Hydrogen Sulfide Areas; Fluid Injection into Productive Reservoirs; Gas-Oil Ratio; Oil Well Allowable Production; Reports on Gas Wells Commingling Liquid Hydrocarbons before Metering; Scrubber Oil and Skim Hydrocarbons; Brine Mining Injection Wells; Gas Shortage Emergency Response; Water Quality Certification Definitions; Underground Storage of Liquid or Liquefied Hydrocarbons in Salt Formations; Underground Storage of Gas in Salt Formations; Standards for Management of Hazardous Oil and Gas Waste; Sour Gas Pipeline Facility Construction Permit. Section 3.106 is adopted with one clarification in subsection (h)(4) and the remaining rules are adopted without changes to the versions published in the August 6, 2004, issue of the *Texas Register* (29 TexReg 7605).

The amendments are adopted in conjunction with other adopted amendments to §4.605 and §4.632 of this title, relating to Identification of Equipment Contaminated with NORM, and Penalties and Certificate of Compliance, as well as with the completed review pursuant to Texas Government Code, §2001.039, of 16 TAC Chapter 3, relating to Oil and Gas Division, published concurrently in this issue of the *Texas Register*.

The amendments are non-substantive and are made to correct the numbers and titles of Commission rules, the names of agencies and areas within the Commission, and some typographical errors. In §3.6(a) and (d), the name of a Commission office is corrected, and in subsection (d)(2), a rule title is corrected. In §3.9(2), the name of the Texas Commission on Environmental Quality is corrected, and in paragraph (14), a Commission rule number and title are corrected. In §3.26(a)(2), and (b)(3)(A), in §3.28(a) and (b), and in several instances in §3.34, Commission rule numbers and titles are corrected. In §3.36(c)(9)(G)(xi), a reference to the Texas Air Control Board is corrected to the appropriate regional office of the Texas Commission on Environmental Quality (TCEQ). In §3.46(k)(1)(B), the name of TCEQ is corrected, and in subparagraph (D) and in subsection (n), two Commission rule numbers and titles are corrected. In §§3.49, 3.52, 3.55, 3.56, 3.81, 3.84, and 3.93, various Commission rule numbers and titles are corrected. In §3.95 and §3.97, the name of TCEQ is corrected, a Commission rule number is corrected, and in subsection (r) in both rules, a reference to a division that no longer exists within the Commission is corrected to refer to the applicable rules in Title 16, rather than the Commission's offices. In §3.98, several corrections are made to TCEQ definitions and titles, as well as several corrections made to Commission rule numbers or titles. In §3.106(b)(1)(C), the name of a Commission division is corrected, and in subsection (j), a rule number is corrected. The Commission notes that in subsection (h)(4), there is a reference to some pipeline safety rules currently in 16 TAC Chapter 7 (relating to Gas Services Division). The Commission has adopted other rule changes that move the pipeline safety rules from Chapter 7 to 16 TAC Chapter 8 (relating to Pipeline Safety Regulations); therefore, the Commission adopts §3.106(h)(4) with a change to refer to that chapter number.

The Commission received no comments on either the proposed amendments or the review of Chapter 3.

The Commission adopts the amendments pursuant to Texas Natural Resources Code, §81.051 and §81.052, which provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission.

Texas Natural Resources Code, §81.051 and §81.052 are affected by the adopted amendments.

Statutory authority: Texas Natural Resources Code, §81.051 and §81.052.

Cross-reference to statute: Texas Natural Resources Code, §81.051 and §81.052.

Issued in Austin, Texas, on November 4, 2004.

*§3.106. Sour Gas Pipeline Facility Construction Permit.*

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

(1) Affected person--The owner or occupant of real property located in the area of influence of the proposed route of a sour gas pipeline facility. If the final proposed route of the pipeline is unknown at the time of application, then an affected person is any person who owns or occupies real property located within the area of influence associated with any possible pipeline route identified by the applicant. For purposes of this definition, the owner shall be the owner of record as of the final day to protest an application. The occupant shall be the occupant as of the final day to protest an application.

(2) Applicant--A person who has filed an application for a permit to construct a sour gas pipeline facility, or a representative of that person.

(3) Application--Application for a Permit to Construct a Sour Gas Pipeline Facility, and all required attachments.

(4) Area of influence--Area along a sour gas pipeline facility represented by all possible areas of exposure using the 100 ppm radius.

(5) Construction of a facility--Any activity conducted during the initial construction of a pipeline including the removal of earth, vegetation, or obstructions along the proposed pipeline right-of-way. The term does not include:

(A) surveying or acquiring the right-of-way;

(B) clearing the right-of-way with the consent of the owner;

(C) repairing or maintaining an existing sour gas pipeline facility; or

(D) installing valves or meters or other devices or fabrications on an existing pipeline if such devices or fabrication do not result in an increase in the area of influence.

(6) Extension of a sour gas pipeline facility--An addition to an operating sour gas pipeline facility regardless of ownership of the addition.

(7) Nominal pipe size--The industry convention for naming pipe. Six inch nominal size pipe corresponds to pipe with an approximate inner diameter of six inches. The actual inner diameter varies based on the wall thickness of the pipe.

(8) Person--An individual, partnership, firm, corporation, joint venture, trust, association, or any other business entity, a state agency or institution, county, municipality, school district, or other governmental subdivision.

(9) Preliminary contingency plan--A contingency plan containing all of the elements required for a contingency plan under §3.36 of this title (relating to oil, gas, or geothermal resource operation in hydrogen sulfide areas), except that:

(A) the plan need not contain the list of names and telephone numbers of residents within the area of influence if required under §3.36(c)(9)(I) of this section. In lieu of this list of names and telephone numbers, the plan shall contain a detailed explanation of the manner in which the names and telephone numbers of residents within the area of influence will be compiled prior to commencement of operations;

(B) the plat detailing the area of influence may be:

*(i)* the detailed plat required under §3.36(c)(9)(H);

*(ii)* a plat containing the information required under §3.36(c)(9)(H), that identifies residential, business, and industrial areas with an estimate of the number of people that may be within any such areas; or

*(iii)* one or more aerial photographs covering the area and providing the information required under §3.36(c)(9)(H); and

(C) a fixed pipeline route need not be specified in the preliminary plan provided the preliminary plan identifies the boundaries of the area within which the pipeline will be constructed and provided that all public notices of the application required under this section note such boundaries and identify the potential area of influence as the total area encompassed by the area of influence associated with all possible pipeline routes.

(10) Sour gas pipeline facility--A pipeline and ancillary equipment that:

(A) contains a concentration of 100 parts per million or more of hydrogen sulfide;

(B) is located outside the tract of production; and

(C) is subject to the requirements of §3.36 of this title.

(11) Tract of production--The surface area which overlies the area encompassed by a mineral lease or unit from which oil, gas, or other minerals are produced if such area is treated by the Oil and Gas Division of the commission as a single tract.

(12) 100 ppm radius--The 100 parts per million radius of exposure as calculated in §3.36(c)(1) - (3) of this title (relating to oil, gas, or geothermal resource operation in hydrogen sulfide areas) for the sour gas pipeline facility.

(b) Permit Required; Exceptions. No person may commence construction of a facility within this State without a permit if the facility is initially used as a sour gas pipeline facility except for the following:

(1) an extension of an existing sour gas pipeline facility that at the time of construction of the extension is in compliance with §3.36 of this title (relating to oil, gas, or geothermal resource operation in a hydrogen sulfide area) if:

(A) the extension is not longer than five miles;

(B) the nominal pipe size is not larger than six inches; and

(C) the operator causes to be delivered to the Safety Division written notice of construction of the extension not later than 24 hours before the start of construction;

(2) a new gathering system that operates at a working pressure of less than 50 pounds per square inch gauge;

(3) an extension of a gathering system which operates at a working pressure of less than 50 pounds per square inch gauge;

(4) an interstate gas pipeline facility, as defined by 49 U.S.C. §60101, that is used for the transportation of sour gas; or

(5) replacement of all or part of a sour gas pipeline facility if the area of influence of the replaced portion of the facility does not increase so as to include a public area, as defined in §3.36(b)(5) of this title, not included in the area of influence of the portion of the replaced sour gas pipeline facility.

(c) Filing and Assignment of Docket Number. Upon filing of an application with the Oil and Gas Division, staff will assign a docket number to the application and will notify the applicant of the assigned docket number. Staff will also assign and provide a docket number to a person who submits a notice of intent to file an application.

(d) Application. A complete application consists of:

(1) a properly completed application Form PS-79, with the original signature, in ink, of the applicant;

(2) if applicant desires notification under subsection (h)(1) by electronic mail, a written request for electronic mail notification and the applicant's electronic mail address;

(3) a plat which meets the requirements of subsection (f)(4) of this section and identifies the boundaries of surveys and blocks or sections as appropriate within the area of influence;

(4) a copy of the applicant's Application for Permit to Operate a Pipeline, Form T-4, if applicable, including all attachments; and

(5) a copy of the completed application for a Statewide Rule 36 Certificate of Compliance, Form H-9, including any attachment required under §3.36 of this title. A preliminary contingency plan may be filed in lieu of a contingency plan if required under §3.36 of this title.

(e) Notice.

(1) For each county that contains all or part of the area of influence of a proposed sour gas pipeline facility, the applicant shall:

(A) cause to be delivered to the county clerk no later than the first date of publication in that county a copy of the items described in subsection (d)(1) - (3) of this section;

(B) publish notice of its application in a newspaper of general circulation in each county that contains all or a portion of the area of influence of the proposed sour gas pipeline facility. Such notice shall meet the requirements of subsection (f) of this section and be published in a section of the newspaper containing news items of state or local interest.

(2) Final action may not be taken on any application under this section until proof of notice, evidenced as follows, is provided:

(A) a return receipt from each county clerk with whom an application form and plat is required to be filed pursuant to paragraph (1) of this subsection; and

(B) the full page or pages of the newspaper containing the published notice required under paragraph (2) of this subsection including the name of the paper, the date the notice was published, and the page number.

(f) The published notice of application shall be at least three inches by five inches in size, exclusive of the plat, and shall contain the following:

(1) the name, business address, and telephone number of the applicant and of the applicant's authorized representative, if any;

(2) a description of the geographic location of the sour gas pipeline facility and the area of influence, to the extent not clearly identified in the plat required to be published in subsection (f)(4) of this section;

(3) the following statement, completed as appropriate: "This proposed pipeline facility will transport sour gas that contains 100 parts per million, or more, of hydrogen sulfide. A copy of application forms and a map showing the location of the pipeline is available for public inspection at the offices of the (insert County name) County Clerk, located at the following address: (insert address of County Clerk). Any owner or occupant of land located within the area of influence of the proposed sour gas pipeline facility desiring to protest this application can do so by mailing or otherwise delivering a letter referring to the application (by docket number if available) and stating their desire to protest to: Docket Services, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Protests shall be in writing and received by Docket Services not later than (specify 30th day after the first date notice of the application is to be published). The letter shall include the name, address, and telephone number of every person on whose behalf the protest is filed and shall state the reasons each such person believes that he or she is the owner or occupant of property within the area of influence of the proposed pipeline facility. It is recommended that a copy of this notice be included with the letter."; and

(4) a plat identifying:

(A) the location of the pipeline facility;

(B) area of influence;

(C) north arrow;

(D) scale;

(E) geographic subdivisions appropriate for the scale; and

(F) by inset or otherwise, landmarks or other features such as roads and highways in relation to the proposed route of the sour gas pipeline facility. These landmarks or other features shall be of sufficient detail to allow a person to reasonably ascertain whether an owned or occupied property that is within the area of influence of the proposed sour gas pipeline facility. Examples of acceptable plats are included in this subsection.

Figure: 16 TAC §3.106(f)(4)(F) (No change.)

(g) Protests. Affected persons have standing to file a protest to an application. In the event the final proposed pipeline route is not known at the time of application, any person who owns or occupies real property located within the area of influence identified in the application shall have standing to file a protest to an application. All such protests shall:

(1) be in writing and filed at the commission no later than the 30th day after the notice is published in a newspaper in the county in which the person filing the protest owns or occupies real property;

(2) state the name, address, and telephone number of every person on whose behalf the protest is being filed; and

(3) include a statement of the facts on which the person filing the protest relies to conclude that each person on whose behalf the protest is being filed is an affected person, as defined in subsection (a)(1) of this section.

(h) Division Review.

(1) Within 14 days of receipt of the application, the commission's designee will provide notice to the applicant that the application is either complete and accepted for filing, or incomplete and specify the additional information required for acceptance. Such notice shall be provided in writing by mail or by electronic mail if the applicant submits with the application a written request that communications regarding application completeness or deficiencies be communicated by electronic mail and provides an accurate electronic mail address. The application shall be completed within 30 days of notification that the application is incomplete or such longer time as may be requested by the applicant, in writing, and approved by the commission's designee. If the application is not completed within the specified time period, the commission's designee shall send notice of intent to deny the application to the applicant. Within ten days of issuance of a notice of intent to deny the application for failure to complete the application, the applicant may request a hearing on the application as it exists at that time. If a request for hearing is not filed within ten days of issuance of a notice of intent to deny the application for failure to complete the application, the application shall be dismissed without prejudice by the commission's designee.

(2) The commission's designee shall make a written recommendation as to whether the materials to be used in and method of construction and operation of a proposed sour gas pipeline facility comply with the rules and safety standards of the commission if the application is not protested, by the latter of the 14th day after the end of the 30-day protest period or the 14th day after the day notice of a complete application is issued.

(3) If, pursuant to subsection (i) of this section, a hearing is held, the staff may introduce evidence relating to the materials to be used in and method of construction and operation of a proposed sour gas pipeline facility.

(4) In determining whether or not the materials to be used in and method of construction and operation of a proposed sour gas pipeline facility comply with the rules and safety standards of the commission, relevant provisions of §3.36 and §3.70 of this title (relating to Oil, Gas, or Geothermal Resource Operation in Hydrogen Sulfide Areas, and Pipeline Permits Required, respectively) shall be considered. If applicable, Chapter 8 of this title (relating to Pipeline Safety Regulations) shall also be considered.

(5) If no affected person files a protest with the commission by the 30th day after the date notice of application was published, the commission's designee shall either make a written recommendation that the permit be issued, that the permit be granted subject to specific conditions required to ensure compliance with applicable laws and regulations, or that the permit be denied. If the commission's designee recommends that the permit be conditionally granted or be denied, the reasons for such recommendation shall be explained. If the commission's designee recommends that the application be conditionally granted or be denied, the applicant shall have a right to a hearing upon written request received no later than 15 days after the date of issuance of notice of conditional grant or denial.

(i) Hearing.

(1) A hearing shall be convened to consider an application for a sour gas pipeline construction permit if:

(A) a protest is timely filed by an affected person;

(B) a request is timely filed by the applicant; or

(C) the commission so elects on its own motion.

(2) The Office of General Counsel shall assign an examiner who shall conduct a hearing in accordance with the procedural requirements of Texas Government Code, Chapter 2001 (the Administrative Procedure Act), and Chapter 1 of this title (relating to the general rules of practice and procedure).

(3) The commission shall convene a hearing not later than the 60th day after a protest is filed, the applicant submits a request for hearing, or the commission gives notice of intent to convene a hearing on its own motion. If the application is not complete as of the date the request for hearing is filed or notice of hearing issued, the 60-day time period for convening a hearing shall not begin to run until such time as notice of a complete application is issued unless the hearing is held pursuant to the provisions of subsection (h)(1). If the hearing is held pursuant to the provisions of subsection (h)(1), the hearing will be held within 60 days of receipt of a request for hearing.

(4) In any hearing convened to consider an application, the applicant has the burden of showing that the materials to be used in and method of construction and operation comply with the applicable rules and safety standards adopted by the commission.

(j) Order.

(1) An order approving an application shall include a finding that the materials to be used in and method of construction and operation of the facility comply with the applicable rules and safety standards adopted by the commission. If an application meets all the requirements of §3.70 of this title, relating to Pipeline Permits Required, including the requirements of §3.36 of this title, relating to Oil, Gas, or Geothermal Resource Operation in Hydrogen Sulfide Areas, the order may approve the certificate of compliance (Form H-9) or grant the pipeline permit or both.

(2) An order denying an application shall state the reason or reasons for the denial.

(3) In the case of an application for which a hearing is conducted, the commission will render a decision not later than the 60th day after the date on which the hearing is finally closed.

(4) If no hearing is held on an application, the commission will render a decision as soon as practicable but not later than the 60th day after the staff prepares its written recommendation in accordance with subsection (h)(2) and (4).

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 November 4, 2004.

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Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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Proposal publication date: August 6, 2004
For further information, please call: (512) 475-1295

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## CHAPTER 4. ENVIRONMENTAL PROTECTION
## SUBCHAPTER F. OIL AND GAS NORM

**16 TAC §4.605, §4.632**

The Railroad Commission of Texas adopts amendments to §4.605 and §4.632, relating to Identification of Equipment Contaminated with NORM and Penalties and Certificate of Compliance without changes to the versions published in the August 6, 2004, issue of the *Texas Register* (29 TexReg 7614).

The amendments are adopted in conjunction with some other adopted amendments to certain rules in Chapter 3 of this title, as well as the completed review pursuant to Texas Government Code, §2001.039, of 16 TAC Chapter 3, relating to Oil and Gas Division, published concurrently in this issue of the *Texas Register*.

The amendments are non-substantive and are made to correct the numbers and titles of Commission rules.

The Commission received no comments on either the proposed amendments or the review of Chapter 3.

The Commission adopts the amendments pursuant to Texas Natural Resources Code, §81.051 and §81.052, which provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission.

Texas Natural Resources Code, §81.051 and §81.052 are affected by the adopted amendments.

Statutory authority: Texas Natural Resources Code, §81.051 and §81.052.

Cross-reference to statute: Texas Natural Resources Code, §81.051 and §81.052.

Issued in Austin, Texas, on November 4, 2004.

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

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## CHAPTER 7. GAS SERVICES DIVISION
## SUBCHAPTER B. SPECIAL PROCEDURAL RULES

**16 TAC §§7.70 - 7.74, 7.80 - 7.87**

The Railroad Commission of Texas adopts the repeal of §§7.70 - 7.74, and 7.80 - 7.87, relating to General and Definitions; Odorization Equipment, Odorization of Natural Gas, and Odorant Concentration Tests; Written Procedure for Handling Natural Gas Leak Complaints; Master Metered Systems; School Piping Testing; Definitions; Safety Regulations Adopted; Jurisdiction; Retroactivity; Required Records and Reporting; Intrastate Pipeline Facility Construction; Corrosion Control Requirements;

and Enforcement, without changes to the proposal published in the May 7, 2004, issue of the *Texas Register* (29 TexReg 4379). Collectively, these are the pipeline safety rules in Texas Administrative Code, Title 16, Chapter 7. The Commission adopts the repeals in order to move the pipeline safety rules into Texas Administrative Code, Title 16, Chapter 8, by adopting new rules in a separate, concurrent rulemaking, to join six other pipeline safety rules already in Chapter 8.

One rule, §7.85, regarding Intrastate Pipeline Facility Construction, is not being retained in Chapter 8 because it duplicates the requirements contained in another rule. Section 7.85 required pipelines to be constructed of steel; this requirement is already part of the Commission's rules under 49 Code of Federal Regulations Part 195, which the Commission has adopted by reference.

The Commission received no comments on the proposed repeals.

The Commission adopts the repeals under Texas Utilities Code, Chapter 121, Subchapter E, which authorizes the Commission to adopt safety standards for the transportation of natural gas and for natural gas pipeline facilities; to require record maintenance and reports; and to inspect records and facilities to determine compliance with adopted safety standards; and Texas Natural Resources Code, Chapter 117, which requires the Commission to adopt rules that include safety standards for and practices applicable to the intrastate transportation of hazardous liquids or carbon dioxide by pipeline and intrastate hazardous liquids pipeline facilities.

The Texas Utilities Code, Chapter 121, Subchapter E, and the Texas Natural Resources Code, Chapter 117, are affected by the repeals.

Issued in Austin, Texas, on November 4, 2004.

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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Mary Ross McDonald
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Railroad Commission of Texas
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## CHAPTER 8. PIPELINE SAFETY REGULATIONS

The Railroad Commission of Texas adopts new rules and amendments to current rules in Title 16, Chapter 8, Subchapters A through D, specifically, new §§8.1 and 8.5, relating to General Applicability and Standards, and Definitions, in Subchapter A, General Requirements and Definitions; new §8.51, relating to Organization Report, amendments to §8.101, relating to Pipeline Integrity Assessment and Management Plans for Natural Gas and Hazardous Liquids Pipelines, and new §§8.105, 8.115, 8.125, and 8.130, relating to Records, Construction Commencement Report, Waiver Procedure, and Enforcement, in Subchapter B, Requirements for All Pipelines; amendments to §8.201, relating to Pipeline Safety Program Fees, new §§8.203,8.205, 8.210, 8.215, 8.220, 8.225, and 8.230, relating to Supplemental Regulations, Written Procedure for Handling Natural Gas Leak Complaints, Reports, Odorization of Gas, Master Metered Systems, Plastic Pipe Requirements, and School Piping Testing, amendments to §8.235, Natural Gas Pipelines Public Education and Liaison, and new §8.245, relating to Penalty Guidelines for Pipeline Safety Violations, in Subchapter C, Requirements for Natural Gas Pipelines Only; and new §§8.301 and 8.305, relating to Required Records and Reporting and Corrosion Control Requirements, in Subchapter D, Requirements for Hazardous Liquids and Carbon Dioxide Pipelines Only. The Commission adopts §§8.1, 8.5, 8.51, 8.101, 8.105, 8.115, 8.125, 8.210, 8.215, 8.225, and 8.245 with changes and adopts §§8.130, 8.201, 8.203, 8.205, 8.220, 8.230, 8.235, 8.301, and 8.305 without changes to the proposed versions published in the May 7, 2004, issue of the *Texas Register* (29 TexReg 4379). The Commission does not adopt proposed new §8.110, Operations and Maintenance Procedures, based on comments.

The Commission adopts the new sections to move the pipeline safety rules from Title 16, Chapter 7 of the Texas Administrative Code into new Chapter 8; the repeal of the rules currently found in Chapter 7 is being adopted in a separate, concurrent rulemaking. The new rules join §8.101, relating to Pipeline Integrity Assessment and Management Plans for Natural Gas and Hazardous Liquids Pipelines, in Subchapter B, Requirements for All Pipelines; §8.201, relating to Pipeline Safety Program Fees, §8.235, relating to Natural Gas Pipelines Public Education and Liaison, and §8.240, relating to Discontinuance of Service, in Subchapter C, Requirements for Natural Gas Pipelines Only; and §8.310, relating to Hazardous Liquids and Carbon Dioxide Pipelines Public Education and Liaison, and §8.315, relating to Hazardous Liquids and Carbon Dioxide Pipelines or Pipeline Facilities Located Within 1,000 Feet of a Public School Building or Facility, in Subchapter D, Requirements for Hazardous Liquids and Carbon Dioxide Pipelines Only.

The Commission adopts two new rules in Chapter 8 that do not have a counterpart in Chapter 7: §8.125, Waiver Procedure, which implements a process that has been used by the Commission and operators on an informal basis for at least 10 years, and §8.245, Penalty Guidelines for Pipeline Safety Violations, which is required by the provisions of Texas Natural Resources Code, §81.0531(d), and Texas Utilities Code, §121.206(d), enacted by Senate Bill 310 (Acts 2001, 77th Leg., ch. 1233, §§ 5 and 71, respectively, eff. Sept. 1, 2001).

The Commission received three comments on the proposed rules. Two associations, the Texas Oil and Gas Association (TxOGA) and the Texas Pipeline Association (TPA), timely filed comments. Houston Pipeline Company LP (HPL) filed comments after the deadline. The Commission addresses all comments in the following paragraphs. The Commission thanks the commenters for their careful reading of the proposed rules, and for their thoughtful suggestions for clarifying changes.

Generally, TPA fully supports the Commission's repeal of the existing pipeline safety rules in Chapter 7 and the restructuring of the pipeline safety rules in Chapter 8. TPA found many of the clarifications of the existing rules helpful in determining the actions that operators must perform in order to maintain safe and reliable service to customers. The new provisions on waiver procedures and penalty guidelines are much needed statements of

procedures between the Commission and industry that are essential to a good relationship. While the Commission's efforts to capture all clarifications and simplifications needed in the rules has been an excellent effort, TPA believes that additional clarification, simplification, and coordination can be achieved through this effort. TPA offered specific comments on each proposed rule and provided suggestions for further clarification. TPA supported the comments filed by TxOGA, except where specifically noted to the contrary.

TxOGA was particularly focused on the rule proposals concerning compliance deadlines for gas pipelines under the Commission integrity management rules; the proposed rule for new pipeline construction commencement reporting; the proposed new rule regarding submission, review, and approval of applications for waiver of a pipeline safety rule; and changing the dollar amount of the Commission gas pipeline incident reporting threshold to match the federal reporting threshold.

HPL participated in the discussions and crafting of comments by both TPA and TxOGA and supported the comments prepared by both associations.

The Commission agrees with some of the comments and recommended changes and has made some of them in the adopted rules. The Commission agrees with some of the suggested changes, but cannot make them because they are outside the scope of the notice given in this rulemaking proceeding. The Commission disagrees with other comments and suggestions, and declines to make the recommended changes. All comments are more fully addressed in the following paragraphs.

With respect to new §8.1(a)(1)(C), which states the applicability of the rules to all pipeline facilities originating in Texas waters (three marine leagues and all bay areas), including those production and flow lines originating at the well, TxOGA suggested qualifying "all pipeline facilities" by adding the word "offshore." TxOGA's view is that the recommended additional wording would clarify that "gathering" lines that originate offshore are not regulated onshore unless located in non-rural areas, and that the only production flow lines to which these regulations apply are offshore production flow lines. The Commission disagrees with the recommended additional language because it would unduly limit the scope of the Commission's jurisdiction to less than that provided in the statute. The wording is identical to the language in §§7.70(c) and 7.82, which is clearly understood and consistently applied.

With respect to new §8.1(d), both TxOGA and TPA declared that the proposed wording was too broad and, applied literally, would require copies of all rulemaking comments and all letters on any subject filed with the U.S. Department on Transportation ("DOT") to be filed with the Safety Division also. This would include filings related to highway and motor vehicle safety over which the Safety Division has no authority. Since the DOT pipeline safety regulations, which are incorporated in full by this rulemaking, already provide for concurrent filing of information necessary for state regulation, TxOGA and TPA concluded that subsection (d) appears unnecessary and could be deleted. On the other hand, if the Commission believes that this provision is needed as a reminder to operators, it should at least be limited to filings made with DOT's Office of Pipeline Safety. The Commission agrees that the rule should be clarified to more specifically state the requirement that only filings made with DOT's Office of Pipeline Safety are the intended subject of this requirement. The Commission has added 49 CFR Part 190, which pertains to the Office of Pipeline Safety's pipeline safety programs and rulemaking procedures, to the list of those DOT filings for which duplicates must be filed with the Commission.

With respect to new §8.1(e), which sets forth penalties for persons who intentionally make a false filing with the Commission, both TxOGA and TPA wanted additional language to make it clear that the Commission could dismiss with prejudice to refiling or reject *only* those applications or other filings containing intentionally incorrect or false information. The Commission is not statutorily limited to dismissing or rejecting only those applications or other filings that contain intentionally incorrect or false information. Because this subsection is a statement of the *potential* consequences for persons who mislead the Commission by filing materially incorrect or false information, the Commission adopts this provision without change to the proposal.

TxOGA suggested changing the last sentence of new §8.1(f) to add the phrase "as applicable." The wording in this subsection is the same as in current §§7.70(a) and (f) and 7.83, which is clearly understood and consistently applied. The Commission declines to make this suggested change because it adds nothing to the scope or meaning of the rule.

TPA commented that because the entire federal pipeline safety regulations, including definitions, have already been adopted by reference in §8.1(b), there is no need for the introductory language of §8.5 to specifically adopt the federal regulation definitions. Instead, TPA suggested, the introductory language should be rewritten to provide notice of the federal definitions without the repetitive adoption language. The Commission agrees with this suggested change; as adopted, new §8.5 incorporates the amended wording.

TxOGA suggested adding to the end of the introductory paragraph the sentence "These definitions are for the purposes of pipeline safety regulation only." The Commission declines to make this change because it is redundant; the phrase "when used in this chapter," means "when used in Chapter 8," which contains only pipeline safety rules.

The proposed definition of "affected person" in new §8.5(1) garnered extensive comment from both TxOGA and TPA, primarily with respect to the limitation set forth in subparagraph (D) that an affected person is one who is affected only adversely. TxOGA suggested changing subparagraph (D) of the definition to read "any other person who, as a result of the waiver sought, would benefit or suffer actual injury or economic damage, other than as a member of the general public or as a competitor." TxOGA argued that the definition of "affected person" with regard to the Commission's pipeline safety regulation waiver procedure should include any person who would be actually impacted by the waiver sought. This may include a person who would be beneficially impacted, as well as one who would experience an adverse impact, if the waiver is granted. TxOGA suggested that the general term "adversely impacted" should be replaced by the more specific "would suffer actual injury or economic damage, other than as a member of the general public or as a competitor." This is similar to the definition of "affected person" in the Commission's waste management regulations as they now exist in §3.8, relating to Water Protection, and as they have been proposed to be amended in proposed 16 Tex. Admin. Code Chapter 4, Subchapter F. TxOGA concluded that without such clarifying language, the definition is much too broad; for instance, a person who might suffer damage through a loss of market share as a result of construction of a pipeline facility could have standing to object to approval of a waiver request.

TPA commented similarly that paragraph (1)(D) of §8.5 should be revised to permit persons beneficially impacted by a proposed waiver to participate in a waiver proceeding. As presently written, paragraph (1)(D) would permit only adversely impacted persons to participate in the waiver proceeding, which is too narrow a group for input on decisions potentially impacting an entire industry. TPA pointed out that waiver applications may not be site specific in all cases, a point discussed more fully below in connection with new §8.125, relating to Waiver Procedure. Where a waiver is of general system application, TPA argues that the waiver request may potentially be mirrored by other industry participants desiring a similar waiver for their operations. In these matters, the Commission should permit a broader range of input than would typically be permitted in a contested case. TPA recommended the following language be used in paragraph (1)(D) to achieve an appropriately broad input to the waiver decision process: "any other person who may be beneficially or adversely impacted by the requested waiver, other than as a member of the general public or as a competitor."

The Commission agrees to a limited extent with TxOGA's and TPA's suggestions regarding the definition of "affected person," and has amended it, but not as suggested in the comments. The Commission has removed the word "adversely" from the definition of "affected person," thus achieving the balance sought by TxOGA and TPA, but without introducing other conditions, limitations, or qualifications that might bring additional uncertainty to the determination of standing to participate in a waiver application. In the paragraphs discussing the comments received on the rule regarding waiver of a pipeline safety rule (new §8.125), the Commission addresses in more detail its position with respect to the waiver process and, in particular, the idea expressed in the comments that pipeline safety waivers are rarely site-specific.

The proposed definition of "direct assessment" in §8.5(6) elicited detailed comments from TxOGA, TPA, and HPL. TxOGA observed that since adoption of the Commission's Pipeline Integrity Assessment and Management Plan regulations, DOT has defined "direct assessment" for gas pipeline transportation in 49 CFR §192.903. The federal definition more accurately describes this process than the current definition in the Commission rules. The purpose of direct assessment is not to "physically examine" pipeline segments, as implied in the current definition in §8.101(a)(1)(A); it is to assess the condition of the entire pipeline to *identify* those segments where actual physical examination is warranted. The term is not specifically defined in the 49 CFR Part 195 hazardous liquid pipeline safety regulations, but the gas pipeline safety regulation definition is appropriate for use with hazardous liquid pipelines and is recommended for use in the Commission regulations until such time as it is defined in the other federal pipeline safety regulations.

TPA also recommended that the Commission should revise paragraph (6) to match the federal definition of "direct assessment." The federal definition does not conflict with the language of proposed paragraph (6) and, in some ways, provides a fuller definition; for example, *see* 49 CFR §192.903. While the other definitions which duplicate federal definitions are not necessary, this definition is necessary to implement the Commission's pipeline integrity rule, §8.101, for hazardous liquids pipelines, because the federal integrity regulations for hazardous liquids pipelines do not contain a definition of "direct assessment."

HPL was particularly concerned with the definition of direct assessment and urged the Commission to adopt the definition used in 49 CFR §192.903 because direct assessment is much more than a process to determine excavation locations. HPL urged the Commission to adopt the assessment deadlines set out in the federal statutes and regulations for gas integrity management. HPL has worked closely with the Commission staff in developing the HPL integrity assessment program that relies heavily on direct assessment. HPL is still waiting for approval of its direct assessment program and over two years of the time allowed for compliance under the current rule has passed. Direct assessment methodology has only recently become somewhat standardized with the implementation of 49 CFR Part 192, Subpart O, and the adoption of ASME B31.8S "Managing System Integrity of Gas Pipelines" and NACE Standard RP0502-2002, "Pipeline External Corrosion Direct Assessment Methodology" by the Office of Pipeline Safety.

The Commission disagrees that the definition in §8.5(6) should be changed to match the federal version, because the Commission's definition goes beyond the identification of corrosion threats. The Commission does agree that the definition should be modified slightly to more clearly express the underlying concept of direct assessment, which is to identify segments of pipeline where physical inspection is appropriate.

TPA further commented that if the Commission declines to use the federal definition, paragraph (6) must be revised to properly reference §8.101(b)(1) rather than "subsection (b)(1) of this section." This is merely a language change required because of removing the definition from §8.101. The Commission agrees with this comment and has corrected this cross-reference in the adopted rule.

Both TxOGA and TPA commented that definitions in proposed §8.5 that are also contained in the federal pipeline safety regulations are unnecessary and should be removed from the Commission's rule. TxOGA suggested eliminating definitions for the terms "gas," in paragraph (10); "hazardous liquid," in paragraph (12); "pipeline facilities" in paragraph (23); "pressure test," in paragraph (24); and "Secretary," in paragraph (28). TPA recommended removing the definitions for "gas," in paragraph (10); "pipeline facilities," in paragraph (23); "pressure test," in paragraph (24); "transportation of gas," in paragraph (29); and "transportation of hazardous liquids or carbon dioxide," in paragraph (30).

TxOGA commented that the statutory definition of "hazardous liquid" (Texas Natural Resource Code, 117.001(2)) adds to the federal definition of "hazardous liquid" the phrase "or any substance or material which is in liquid state, excluding liquefied natural gas, when transported by pipeline facilities and which has been determined by the United States Secretary of Transportation to pose an unreasonable risk to life or property when transported by pipeline facilities." Notwithstanding, TxOGA stated, it is unnecessary to include this phrase in a hazardous liquid definition in the Commission rules; if the Secretary of Transportation makes such a finding for a substance, then it will be specifically listed in the federal regulations that are already incorporated in the Commission's rules. Moreover, the current Commission definition can be read to imply that pipeline transportation of petroleum, petroleum products, and anhydrous ammonia by pipeline *by definition* poses an unreasonable risk to life or property.

TPA commented that there is no need for the definition of "pressure test" in subsection (24). The proposed definition of this term merely cites the various sections of the federal safety regulations that address pressure tests. Because the pressure test requirements of the federal safety regulations are adopted in their entirety by this rule, it seems superfluous to create a reference

to such regulations as a definition. The specific rules requiring pressure tests clearly identify the appropriate pressure testing requirements so there is no need for this general, all-encompassing definition that adds no substance to the regulations.

TxOGA commented that the definition of "Secretary" in paragraph (28) is not needed because in the only instance in which this term is used, the rule clearly specifies "the Secretary of Transportation" with a citation to the federal statute.

Noting that although the definitions for "transportation of gas" and "transportation of hazardous liquids" in new paragraphs (29) and (30) do not exactly duplicate the federal definitions the differences are not significant, TPA also pointed out that the DOT is presently pursuing an effort to establish a category of piping known as "regulated gathering." TPA commented that the adoption of these definitions will alter the regulatory mechanism for gathering lines, and suggested that the Commission should not adopt language in this proceeding that will merely create difficulties when the federal change is made. Because the federal definitions will work in the interim and will contribute to maintaining the consistency between the federal and state regulations as future changes develop, TPA recommended that proposed paragraphs (29) and (30) be deleted.

The Commission declines to delete the definitions of "gas," in paragraph (10); "hazardous liquid," in paragraph (12); "pipeline facilities," in paragraph (23); "pressure test," in paragraph (24); "transportation of gas," in paragraph (29); and "transportation of hazardous liquids or carbon dioxide," in paragraph (30). Retaining definitions for these frequently-used terms, even though they may be duplicated in the federal regulations, is a convenience for those who use the Commission's pipeline safety rules, particularly members of the general public who may not be as familiar with the federal rules.

With respect to the definition of "hazardous liquid" in paragraph (12) of the new rule, the Commission notes that this wording is identical to that found in current §7.80(2) which has not been either misunderstood or inconsistently applied. The Commission disagrees that the current statutory and rule definition of "hazardous liquid" necessarily implies that pipeline transportation of petroleum, petroleum products, and anhydrous ammonia *by definition* poses an unreasonable risk to life or property. The Commission reads this definition as requiring a specific determination by the United States Secretary of Transportation that a substance that is liquid when transported by pipeline poses an unreasonable risk to life or property when transported by pipeline facilities. The Commission recognizes that it is not authorized unilaterally to declare a substance to be a hazardous liquid.

With respect to the definition of "pressure test," in paragraph (24), the Commission notes that there is a need to define this term for the pipeline safety regulations applicable to systems that are not under DOT jurisdiction, such as integrity management and school piping testing.

The Commission agrees that the definition of "Secretary," in paragraph (28), is not particularly useful and has removed it as TxOGA suggested. The paragraphs following "Secretary" have been renumbered.

The Commission further notes that the federal rulemaking pertaining to "regulated gathering" is not final and, pending the outcome, it is convenient to retain the definitions of "transportation of gas" and "transportation of hazardous liquids" in new paragraphs (28) and (29), renumbered because of the deletion of the proposed definition of "Secretary" in paragraph (28).

TxOGA and TPA both suggested that, because the definition of "master metered system" uses the term "local distribution company," and that term is not defined in new §8.5 or the federal pipeline safety regulations, incorporating the definition of that term found in the Commission regulations at §7.115(18) would be adequate for the purposes of the proposed Chapter 8, Subchapters A - D. The new definition of "local distribution company" would read "an entity that operates a retail gas distribution system." The Commission agrees that it might be useful to have a definition for this term, but disagrees that the definition in §7.115(18) is adequate for the regulation of pipeline safety, primarily because the rules in Chapter 7 pertain to the economic regulation of gas utilities. Because the Commission does not have jurisdiction to regulate the rates of municipally-owned utilities, the definition in Chapter 7 pertains only to those gas utilities over which the Commission does have jurisdiction. In contrast, the Commission has jurisdiction over municipally-owned utilities for the purpose of regulating pipeline safety.

The Commission also finds that, in the definition of "master metered system," use of the term "company" might be misleading, in that it might suggest an entity that operates a utility for the profit of shareholders and thus impliedly exclude a municipally-owned system from the scope of the term. To address the legitimate concern expressed in TxOGA's and TPA's comments, the Commission has modified the definition of "master metered system" in the adopted rule. The Commission declines, however, to adopt a definition for the term "local distribution company" or "local distribution system," because no definition was proposed. Amending the definition of "master metered system" to substitute the word "system" for the word "company" may obviate confusion over the meaning of the term "master metered system"; additionally, the amended definition specifically excludes those systems that have been designated as local distribution systems. The Commission has determined that these clarifying changes add the specificity needed in the definition of the term "master metered system."

TPA and TxOGA suggested that the readability of the definition of "operator" in new §8.5(20) would be improved by slight rewording. The Commission agrees and has adopted this clarified version.

TxOGA and TPA both commented on new §8.51, relating to Organization Report. Both opined that the Commission's authority under Texas Utilities Code, §121.201(a)(2), to require an operator such as a master meter operator to file an Organization Report (Form P-5), does not include authority to require those operators to file financial assurance. TxOGA stated that it would not be appropriate to require master meter operators to furnish financial security for their operations, because they do not have operations for which the financial security is needed. The only purpose of the Texas Natural Resources Code, Chapter 91, financial security requirements is to minimize state exposure for the abandonment and cleanup of orphaned wells and sites. TxOGA suggested wording that would clarify the P-5 Organization Report requirements for master meter operators.

TPA commented that Texas Utilities Code, §121.201(a)(2) does not provide for the Commission to require the financial security or filing fees typically associated with Form P-5 filings; it only empowers the Commission to obtain P-5 type information from persons who are not otherwise required to provide it. In order to properly implement the statutory provision and the stated intent of the preamble, TPA suggested that §8.51 should be revised to address only those persons not otherwise required to file

an organizational report under Texas Natural Resources Code, 91.142. The language proposed by TxOGA in its comments is a reasonable revision of this proposed language that would satisfy TPA's concerns. The Commission agrees with these comments, and has amended the wording in §8.51 as suggested by TxOGA.

Both TxOGA and TPA commented on the proposed amendments to §8.101, relating to Pipeline Integrity Assessment and Management Plans for Natural Gas and Hazardous Liquids Pipelines. TxOGA recognized that the current Commission deadlines for completion of initial assessments are appropriate for hazardous liquid pipelines, but recommended revising the rule to incorporate the federal deadlines for assessment of gas pipelines. In TxOGA's view, normalization of these deadlines will allow both industry and the state to make the best use of available resources for completion of this important work. TxOGA offered extensively revised wording for subsection (b) of this rule.

TPA commented that because the Commission has adopted all of the federal safety regulations, including those dealing with pipeline integrity in high consequence areas, a potential conflict exists with the Commission's pipeline integrity rule with regard to the deadlines for completion of the initial baseline assessments for natural gas pipelines. As currently written, the Commission's rule requires 50% of the baseline assessments for natural gas pipelines to be completed by January 1, 2006, and the remainder to be completed by January 1, 2011. The federal regulations require the initial 50% of baseline assessments for natural gas pipelines to be completed by December 17, 2007, and the remainder to be completed by December 17, 2012. Both sets of rules require similar activities to be performed on natural gas pipelines with the only substantive difference being which pipelines must be assessed. The Commission's rule has broader coverage than the federal regulations.

To simplify administration of both sets of regulations, which are both enforced by the Commission's Safety Division, TPA suggested that it would be appropriate to synchronize these deadlines for natural gas pipelines in the Commission's rule. Synchronizing the deadlines would permit operators to consolidate assessment efforts, simplify integrity plans, and allow Commission staff to consolidate enforcement activities. TPA suggested that synchronization would also provide a side benefit of a relatively small extension of the time for completion of the first 50% of baseline assessments. TPA commented that it has taken over three years to obtain the first approvals of direct assessment methodologies that are an important resource in completing baseline assessments with minimum interruptions to end-use customers and producers. Recognizing that even though this change was not a part of the initial proposal, TPA recommended that the Commission should consider adopting it because such a change is a foreseeable outcome of the Commission's efforts to incorporate the federal pipeline safety regulations and to clarify the regulations.

To TPA's comment that it has taken three years to obtain the first approvals of direct assessment methodologies, the Commission responds that the first completed application for the use of direct assessment was not even received until July of 2003; it was approved April 23, 2004. The Commission agrees with extending the deadlines stated in §8.101 to coincide with the deadlines for compliance in the federal pipeline safety rules and has made the suggested changes. Having the state and federal deadlines coincide will make the pipelines' compliance with pipeline safety standards less complicated. The Commission adopts the changes in subsection (b) of §8.101.

Both TxOGA and TPA commented regarding the wording in proposed new §8.105, relating to Records. TxOGA stated that the federal record retention requirements are adequate for those records that the incorporated federal pipeline safety regulations require to be maintained. For any other records required by the Commission, prescribing a five-year retention period would be the least confusing. The detailed listing in proposed §8.105 of records that need to be kept duplicates the requirement to keep records and documents that is imposed by the federal pipeline safety regulations that are incorporated by reference in the Commission regulations. Further, new §8.105 might even be confusing, because the structure implies that these are records in addition to those required by the cited federal regulations or are the only records that are required. TxOGA agreed that it might be useful to list, for information purposes only, some of the records that may need to be maintained, and offered specific suggestions for rewording the section.

TPA commented that the proposed language in §8.105 would be likely to cause confusion as to the types of records required to be maintained and over the length of time those records are to be retained. TPA suggested that the Commission revise the proposed language to something closer to the existing rule. TPA recommended specific language that, in its view, would eliminate confusion over which records must be maintained and how long each record must be retained.

The language in proposed §8.105 was intended to ensure that items not covered by the federal regulations were retained at least five years. The Commission adopts §8.105 with the changes suggested by TxOGA, which clarify the requirements and offer guidance for retaining specific types of records.

TxOGA commented that the Commission should not adopt proposed new §8.110, relating to Operations and Maintenance Procedures. Federal rules incorporated by reference already require operators to prepare and use Operations and Maintenance (O&M) manuals. Not adopting this proposed rule would eliminate the "extra provision" in the Commission rules that requires operators to submit O&M manuals to the Commission 20 days prior to the effective date. The provision that states "If the Commission finds the plan is inadequate to achieve safe operation, the operator shall revise the plan" does not have to be stated in this rule for the Commission to have this authority. The Commission agrees with this comment and does not adopt proposed new §8.110.

TxOGA and TPA commented extensively regarding proposed new §8.115, relating to Construction Commencement Report. HPL does not support the Commission's recommended change to require construction notice of gas pipelines less than five miles in length because it would create confusion in the industry and result in an increased administrative burden.

TxOGA recommended that the proposed section heading should be revised to insert the word "new" at the beginning to clarify that the pre-construction notice requirement is only for *new* pipeline construction. In addition, TxOGA proposed a new subsection (b), listing categorical exceptions to the notification requirement, to further clarify this point.

Further, TxOGA strongly disagreed that there is any need for the Commission to make the pre-construction requirements for gas pipelines any more stringent than the current requirements. Historically, the potential for unnecessary loss of gas production and

reserves has provided good reason for not requiring pre-construction notice for gas pipelines under five miles in length. Producers can transport oil production by truck until an oil pipeline has been constructed, but there is no means to transport natural gas until a gas pipeline has been constructed. TxOGA commented that the current pre-construction requirements for hazardous liquids pipelines are unnecessarily stringent and suggested that they be made applicable to new construction of five miles or more of pipeline, the same as those currently in place for gas pipelines. Finally, TxOGA recommended that the Commission not attempt to require pipeline operators to specify the path a pipeline will take. Pipeline right-of-way acquisition often may continue after the commencement of construction. A requirement for a pipeline to file a public commitment to an exact path for a pipeline can increase right-of- way costs, because the pipeline operator may then have less leverage to argue that if the costs are too high the operator will select an alternate route.

TPA disagreed with the proposal to combine into a single rule the new construction reporting requirements for natural gas and hazardous liquids pipelines because the proposed language significantly alters the current reporting requirements for natural gas pipelines. The proposal extends the reporting requirements to all construction, not just new construction, and reduces the reporting threshold from five miles to one mile. TPA found no substantive support for the Commission's stated justifications for the change of minimizing industry confusion, reducing industry inquiries, and controlling the Commission's inspection schedule.

With respect to natural gas pipelines, TPA argued, the proposed rule is likely to cause greater confusion, not less, and heavier, not reduced, workloads for the Commission staff. TPA members are unaware of industry confusion over the reporting requirements for natural gas pipelines and consider the proposal to expand the reporting requirements to cover all construction more likely to increase confusion than would leaving the language as it currently exists. Under the existing rule, it is clear that only new construction must be reported, but the proposed rule raises questions of whether repair, replacement and maintenance work needs to be reported in addition to new construction. The reduction in the mileage threshold for the reporting obligation will significantly increase the number of reports being filed, particularly if replacement work is included. According to TPA, the reduction in mileage for the reporting threshold from five miles to one mile will also increase the burden on industry significantly. Without some substantive support for the Commission's stated reasons for the changes, the Commission should not alter the requirements for reporting on natural gas pipelines. In addition, TPA commented that the Commission may have failed to fully consider the impact of this reporting change on smaller operators; many of whom would never have filed a report under the five-mile threshold, but may be required to do so under the one-mile threshold. TPA concluded that the preamble indicates no additional cost for small operators, which seems to be an illogical and unsupportable conclusion.

TPA stated its support of TxOGA's comments concerning new §8.115 regarding hazardous liquids pipelines. TxOGA's suggested wording revisions would permit the Commission to achieve its goal of combining the natural gas and hazardous liquids reporting requirements while limiting the information collection to an appropriate level. TPA stated that these reporting requirements for construction were originally adopted primarily as just an information source for the Commission on industry construction activity. It should also be remembered that the Commission deleted a proposed requirement on specifying pipeline route when the rule was initially adopted. This deletion was in response to the same issues raised by TxOGA in its comments to this proposal. TPA concluded by stating that the Commission should use the proposed language of TxOGA if the Commission desires to adopt a combined rule applicable to natural gas and hazardous liquids pipelines.

In response to the comments on proposed new §8.115, the Commission first points out that, as a replacement for current §§7.70(g)(4) and 7.84(c), both of which pertain to new construction reports, new §8.115 is intended to apply only to new construction, which was the basis of the analysis of compliance costs for individual, small business, and micro- business pipeline operators. The Commission does not intend for this rule to apply to anything other than new construction, and regrets any confusion caused by omitting the word "new" from the title of the rule. Restoring the word "new" to the title obviates the need for the categorical exceptions that TxOGA proposed as the subject of a new subsection (b), which the Commission declines to adopt as unnecessary.

Because the 30 days' notice requirement applies only to new construction, any pipeline construction undertaken for public health, safety, or environmental emergencies and for repairs and maintenance, including replacement of existing lines, is not subject to the notice requirement in new §8.115. However, the Commission does expect to be notified of new construction, even if 30 days' notice cannot be given. As has been the case for a number of years, no notice is required for new construction of pipelines located completely on the lease or unit from which the oil or gas is produced and for which no T-4 permit is required.

Currently, §§7.70(g)(4) and 7.84(c) require 30 days' notice of the commencement of new construction for both natural gas and hazardous liquids pipelines; that is not a new requirement. Currently, these rules require natural gas pipeline operators to report "the proposed originating and terminating points, counties to be traversed, size and type of pipe to be used, type of service, design pressure, and length of the proposed line" and required hazardous liquids pipeline operators to report "the proposed location, path, size and type of pipe to be used, intended use, design pressure, and length of the proposed line." The same information that pipeline operators are currently supplying in new construction reports is the information that the Commission needs and tried to convey in the wording of new §8.115. The Commission has never required pipeline operators to supply the precise path that a new pipeline will take, and is not imposing that requirement in new §8.115. Nevertheless, the Commission has removed the word "path" from the new rule; reporting of the originating and terminating points and the counties to be traversed is sufficient.

With respect to the change of reporting requirements for natural gas pipelines from five miles to one mile, the Commission recognizes that this proposed change could increase the number of reports for new distribution construction. While the Commission seeks to impose consistent requirements as between hazardous liquids pipelines and natural gas pipelines with respect to notification of new construction, the Commission does not need to be notified of distribution level construction projects of less than five miles. Therefore the Commission adopts this rule to exempt new construction on natural gas distribution and master metered systems of less than five miles. For natural gas gathering and transmission pipelines, and for hazardous liquids pipelines, the new construction notification requirement remains at one mile.

New §8.125, relating to Waiver Procedure, garnered extensive and detailed comments from both TxOGA and TPA. In general,

TPA endorsed the adoption of a procedure for handling waiver requests. Although the Commission has historically handled waivers through an informal process, both the Commission and industry will benefit from a clearly stated procedure. The Commission agrees with this comment.

With respect to proposed §8.125(a), TxOGA agreed that a waiver request is an inappropriate response to a notice of violation while the violation remains outstanding. However, TxOGA opined that a waiver of a regulation might be the most appropriate long-term response to similar situations in the future, and recommended revising the proposed language to eliminate any suggestion of an eternal prohibition on a waiver request related to a notice of violation. TxOGA would delete the last sentence of subsection (a) as proposed, which read, "The Division shall not assign a docket number to or consider any application filed in response to a notice of violation of a pipeline safety rule" and add a new sentence to read, "An application for a waiver is not an acceptable response to a notice of an alleged violation of a pipeline safety rule." Based on other comments, the Commission has added a new subsection (a), redesignated the proposed sections as (b) through (j), and has included TxOGA's suggested wording in what is adopted as subsection (b), but has not deleted the final sentence of proposed subsection (a) (adopted as subsection (b)).

TPA also agreed that an application for a waiver is not an appropriate answer to a notice of violation, but worried that the language of the proposed rule could be read to forever prohibit the filing of an application for waiver related to a rule once a notice of violation is issued. TPA suggested that the Commission revise the wording of the proposed rule as follows: "An application for a waiver is not an acceptable response to a notice of an *alleged* violation of a pipeline safety rule." This alternative language would clearly state the necessity of addressing the notice of violation prior to filing the application, but would not convey the idea that an operator could not file a waiver application to address an issue that was related to a notice of violation. TPA averred that there may be situations where a waiver of the pipeline safety rules might be the best corrective action for an operator; that option should not be foreclosed simply because there had been an earlier notice of violation. Furthermore, TPA stated, a notice of a violation is not the same as a final finding of violation. To essentially forbid a future waiver application because at some point in the past a notice of violation was issued is an extremely severe penalty for an entity and could result in less than optimum safety. TPA concluded that if the Commission does not desire to change the proposed language, it should at least provide some additional explanation in the preamble to clarify how this language would apply. The Commission agrees and has both added explanatory language and has clarified proposed wording in the adopted rule.

The Commission confirms that an application for waiver is not an acceptable response to a notice of a specific violation. However, there may be instances in which an alleged violation may be noted and a waiver application may be appropriate. The Safety Division staff has worked and will continue to work with operators to identify conditions or situations that may be suitable for a waiver.

With respect to new §8.125(c), TxOGA and TPA commented generally that the requirements for the content of an application for waiver appear to assume that all waivers will be location- specific. According to TxOGA and TPA, this has not historically been the case; many waivers are essentially systemwide in scope. TPA cited the clockspring waiver as a good example of a waiver that was not site specific. TxOGA stated its view that several of the information requirements listed in subsection (c) will not be needed in those instances where the waiver request is not location-specific or when the request is not dependent on those particular items. TxOGA and TPA recommended making changes to subsections (c)(4) and (5) to clarify the rule in that regard; TxOGA provided specific wording.

The Commission disagrees with the statement that "many waivers are essentially system-wide in scope," which the Commission understands to mean "company-wide" or "industry-wide." The Commission intentionally and specifically proposed new §8.125 to apply to site-specific waivers because the Commission considers compliance with pipeline safety regulations to be the standard, not the exception. In the last 12 years, there has been only one application for an industry-wide waiver, and that was the clocksprings waiver, which the Commission approved.

With respect to the requirement in subsection (c)(5)(E) for operators to submit information on ownership of the real property of the site, both TxOGA and TPA commented that it would be very onerous in many instances. It will require a title search to determine the current real property owner (who, in many cases, will not be resident on the property). More importantly, this information does not appear relevant to a question as to the technical merits of the waiver application request relative to pipeline safety. TxOGA and TPA further commented that the information that subsection (c)(5)(F) would require is not relevant to a waiver request; the legal authority of the applicant to occupy land for the purposes of pipeline operations is a civil issue. When an operator requests a drilling permit, the producer is not required by the Commission to prove that the operator has a valid mineral lease. The Commission disagrees that the information required by subsection (c)(5)(E) and (F) is not relevant. The Commission is not requesting the information for the purpose of determining anyone's right to occupy the property; however, if the pipeline does not own the property it occupies, then the property owner may have standing to participate in a waiver application as an affected person.

TxOGA would delete the requirement stated in subsection (c)(7). TPA observed that subsection (c)(7) states a standard for approval of a waiver that is different from the standard that is applied at the federal level where final approval authority resides. Because the waiver will need to satisfy the federal standard for waivers, the Commission should use a consistent standard during its review of waiver applications. The federal standard is "not inconsistent with pipeline safety." The Commission agrees with TPA's comment and has made the suggested change in subsections (c)(7), (f)(1)(A), and (h) (now designated as subsections (d)(7), (g)(1)(A), and (i), respectively).

TxOGA wanted to delete the requirement in proposed subsection (c)(9) to provide a list of the names, addresses, and telephone numbers of all affected persons because it is unreasonable. TPA stated that unless a waiver is site specific, an operator will never be able to comply with the requirements of proposed subsection (c)(9). An operator cannot independently determine who would consider themselves to be adversely affected by a waiver application, and therefore can not determine the universe of individuals to include on the list. TxOGA commented that pipeline construction in Texas may involve several hundred of miles of pipe. A pipeline operator should not be expected to have to give actual notice to every individual person who might be an affected person. This is particularly true with regard to

waivers requests that are not site-specific and may cover multiple systems as well as multiple operators in the future.

TxOGA recommended adding the language to subsection (d)(1) that would limit its applicability to only site-specific waiver applications; that would require providing the docket number of the waiver application "if available"; and that would permit filing copies of return receipts as proof of notice.

With respect to new §8.125(d)(2), TxOGA commented that a reasonable method for furnishing notice to affected persons would be to give actual notice to affected persons representing cities and counties in those particular instances in which the waiver request is site-specific, with constructive notice through newspaper publication to all other affected persons. The docket number of the application will not always be available at the time the application is submitted, and should be required only if available. The wording should be clarified by stating that copies of return receipts (of notice sent by certified mail) are acceptable proof of notice. To minimize delay in beginning construction, newspaper publication should be required in two consecutive publications rather than once a week for two consecutive weeks.

TPA commented that §8.125(d) suffers from the same difficulties as subparagraph (c)(9). Even in site-specific situations, the operator can not determine every individual that might be adversely impacted by the waiver. Such a requirement mandates that the operators understand every individual's perception of the waiver on their individual circumstances. Notice to affected persons only deals with those adversely affected as the term is presently defined, and even with the changes suggested by TPA, there would be no clear way to identify all affected persons. A better approach would be to require notice to city and county officials in instances where there was a site specific waiver and to otherwise rely on newspaper or *Texas Register* notice for other situations and individuals. The notice requirements also mandate the inclusion of the docket number in the published notice. TPA stated that since the Commission has historically not provided assignment of docket numbers prior to filing, either the Commission must change this practice or the publication requirements will unnecessarily create additional delay in the processing of waiver applications. Depending on the newspaper in which the notice is being published, two-week advance submission may be required to obtain timely newspaper notice.

The Commission disagrees with these comments about §8.125(c)(9) and subsection (d)(1) and (2), adopted as (d)(9) and (e)(1) and (2). As noted in previous paragraphs, the Commission has deleted the word "adversely" from the definition of the term "affected person." In addition, the Commission reiterates its position that waiver applications are intended to be site-specific; thus, the scope of the notice requirement is not impossibly broad as TxOGA and TPA fear. In addition, this information should be known to the operators because of their compliance with community liaison responsibilities. More specifically, subsection (e)(1) is not a pipeline construction notice requirement. The requirement in subsection (e)(1) pertains to giving adequate notice of a pipeline operator's request to deviate from standard pipeline safety practices at a specific location on a pipeline that is already in place and in operation. Except in extremely rare circumstances (such as the clocksprings waiver application), waivers do not apply to entire company operations. The Commission also disagrees that docket numbers are not routinely available to applicants; if a docket number is not available on the day the application is filed, it is available from Gas Services Division staff within a day or two. Safety waiver applications do not have a time limit. Therefore waiting a day or so, if necessary, to obtain a docket number is not unreasonable, because the docket number provides useful, specific information to those receiving notice. The Commission believes it is very important to give specific notice to anyone who is an affected person. Also, publication of notice in a newspaper of general circulation in the county or counties in which the facility or operation for which the waiver is requested is located will not be onerous for a site-specific application, which is the premise of new §8.125; publication once a week for two consecutive weeks is consistent with the manner in which publication notice is given in other Commission matters. Again, because there is no time deadline for processing waiver applications, a two-week delay in publishing notice is not going to work a disadvantage to the pipeline operator; while the waiver application is pending, enforcement proceedings are either not initiated or are suspended. Finally, the Commission prefers to leave to the discretion of the Safety Division the determination of whether copies of return receipts are acceptable proof of notice.

TxOGA would eliminate §8.125(d)(3) (adopted as (e)(3)): The purpose of a rule is to provide both direction and predictability for all parties. Proposed subparagraph §8.125(d)(3) does the exact opposite by authorizing the director to impose any notice requirements that the director deems necessary. TxOGA commented that the proposed notice requirements in paragraphs (1) and (2), with the revisions suggested, are appropriate and that paragraph (3) is not needed.

The Commission finds that allowing the director to decide whether additional notice is appropriate may be useful in waiver applications that present atypical facts or issues. Delegating to the director the authority to establish notice requirements will allow the staff to be flexible and responsive in handling waiver applications. In particular, if the Commission receives an application for a non-site-specific waiver, this authority would allow the director to fashion notice requirements that would meet the unique facts of such an application.

TxOGA and TPA commented on §8.125(e) (now designated as subsection (f)), that when there is a protest (or a statement of support) for a waiver, the Commission, the applicant, and any other affected persons need to understand the basis for the objection or support. As drafted, the proposal would have required a person to show only that he or she is an affected party, without giving any of the other parties any idea as to why, for instance, a protestant is opposing the waiver. TxOGA suggested specific changes to the paragraphs in subsection (e) that clarify "support" is appropriate as well.

The Commission generally agrees with this comment. Having removed the qualifying word "adversely" from the definition of "affected person," TxOGA's recommended wording changes make sense, and the Commission adopts proposed §8.125(e) as §8.125(f) with the suggested changes. The Commission notes, however, that the requirements of this subsection are largely hypothetical; there has never been a statement of protest, objection, or request for a hearing with respect to a safety waiver application. In the past 12 years, of the few hearings held on safety waiver applications, there were only statements in support of the applications. The hearings were convened primarily to ensure that there would be a forum for any person opposed to an application to be able to express that opinion.

With respect to §8.125(f), both TxOGA and TPA suggested that subsection (f) (now designated as subsection (g)) be revised to

reflect the federal standard for approval of waivers in 49 USC §60118(c), which says that a waiver must not be "inconsistent with pipeline safety," rather than the standard set forth in the proposed rule which provides that "grant of the waiver will neither imperil nor tend to imperil the health, safety or welfare of the general public and the environment." The Commission agrees with this comment and adopts this subsection with the suggested change to the proposed text.

In addition, TxOGA commented that §8.125(f)(1)(B) and (2) need to be revised to deal with the notice of violation issue discussed in connection with proposed §8.125(a). These provisions, now in subsection (g) of the adopted rule, are unnecessary and inappropriate because §8.125(a) clearly states that the division "shall not assign a docket number to or consider any application filed in response to a notice of violation of a pipeline safety rule." In TxOGA's view, a prohibition on consideration of a waiver application filed "to avoid the expense of safety compliance" is inappropriate because it prevents operators from seeking more cost-effective means of protecting the public and is inconsistent with standard set forth in §8.125(h) (adopted as subsection (i)).

The Commission disagrees with these comments. The provisions in proposed §8.125(f)(1)(B) and (2) (now designated as subsection (g)(1)(B) and (2)) are intended to apply in a situation in which a waiver request might be docketed before it is determined that there is an outstanding citation for the violation the application seeks to have waived, or there is some other clerical error or administrative mis-communication that would result in an otherwise impermissible application being docketed and, perhaps, processed. The Commission also reiterates its position that a prohibition on consideration of a waiver filed simply to avoid the expense of safety compliance is completely appropriate. Cost is not a proper objection to operator compliance with pipeline safety requirements. Waiver applications are properly based on a technical inability to comply with pipeline safety standards, related to the specific configuration, location, operating limitations, or available technology for a particular pipeline. This requirement is consistent with the standard for approving waiver, "not inconsistent with pipeline safety." Based on TxOGA's comment, the Commission has added a new section (a) that declares the general purpose and scope of a waiver application; proposed sections (a) through (i) are adopted as redesignated sections (b) through (j).

TPA commented that proposed §8.125(g) (adopted as subsection (h)) should be revised to provide a deadline for the setting of a hearing once a waiver application is referred to the Office of General Counsel. While the time period will need to be of sufficient length to allow coordination of waiver hearings with other hearings, there is also a need to expedite waiver reviews at the Commission. TPA stated that, after Commission review, the waiver will be subject to a 60-day review by the Department of Transportation before the waiver becomes effective. Thus, this step in the approval process should not be a source of undefined delay. TxOGA suggested wording changes in this subsection that would require the hearing to be conducted within 60 days of being referred to the Office of General Counsel, observing that a 60- day deadline for a hearing is consistent with the deadline in §3.106, relating to Sour Gas Pipeline Facility Construction Permit, for setting a hearing on an application for construction of a sour gas pipeline line.

The Commission disagrees with both comments that suggest imposing a deadline for setting a hearing and for conducting a hearing. The deadline for conducting a hearing that is set forth in §3.106 is in fact imposed by statute (Texas Utilities Code, §121.454(b)(1)), so that it is not within the Commission's discretion to set a hearing at another time; this is not a deadline for setting the hearing. Further, this provision is completely hypothetical; there has never been a protested safety waiver application, so none have been referred to the Office of General Counsel. The Commission does not intentionally delay the processing of waiver applications; however, because enforcement action is held in abeyance during the pendency of an application, these applications do not have the same urgency as, for example, statements of intent to increase rates filed pursuant to Texas Utilities Code, Chapter 104, that are subject to the priority stated in Texas Utilities Code, §104.106. Nevertheless, to emphasize that the Commission expects waiver applications to be processed as quickly as possible, subsection (h)(2) (proposed as subsection (g)(2)) is adopted with language requiring the prompt assignment of a hearings examiner and the conduct of a hearing as quickly as practicable.

TxOGA suggested that §8.125(h) (adopted as subsection (i)) be revised to incorporate the federal standard for granting a pipeline safety waiver. The Commission agrees and has made the suggested change.

New §8.130 pertains to enforcement. TxOGA proposed changes to §8.130(a) and (b) to clarify that only documents relevant to pipeline safety are subject to inspection by the Commission for the purposes for assuring compliance with the pipeline safety regulations. The Commission disagrees with this comment. This recommended change could put inspectors on the spot without supervisory back-up when they disagree with operators about what documents or other information is relevant. The Commission adopts these subsections without change to the proposed wording.

TxOGA also proposed wording changes to new §8.130(c)(2); the Commission declines to make the suggested changes because as proposed, the wording is clear and grammatically correct.

New §8.210 pertains to reporting requirements. With respect to subsection (a), both TxOGA and TPA recommended that the Commission increase the minimum damage amount for reportable incidents, for the following reasons. The federal rules, which also include the cost of the gas lost in an incident, have been adjusted to reflect a minimum damage amount of $50,000. Average natural gas prices have increased by nearly an order of magnitude since the Commission's $5,000 threshold was adopted. With the increased cost of natural gas and repair materials, the existing $5,000 minimum results in many smaller incidents being classified as reportable. TxOGA and TPA explained that the original intent of the reporting requirement was to identify the largest and most significant incidents so that information could be gathered about these events in a very timely matter; they conclude that these reports consume Commission and industry resources that could be better spent on initiatives such as pipeline integrity and public awareness. The Commission agrees with this comment in part, but has retained the lower dollar amount only for the telephone reporting requirement in the rule as adopted. The $5,000 damage amount has been in place for many years; that information aids the Commission in the compilation of data regarding third party damage to pipelines. The written report will be limited to those incidents in which the estimated damage to the property of the operator, others, or both totals $50,000 or more, including gas loss.

TPA commented that subsection (c) of §8.210 could be clarified if it simply required the filing with the Safety Division of a duplicate copy of the report required to be filed under 49 CFR §192.23. The Commission agrees with this comment and has corrected the reference in the rule from 49 CFR §192.25 to 49 CFR §192.23.

With respect to new §8.215, Odorization of Gas, TxOGA and TPA commented that in subsection (a)(1), the proposed language should be revised to include the limitations currently found in 16 Tex. Admin. Code §7.71(a)(1). Those limitations effectively limit the scope of the rule to companies supplying gas for direct use or companies operating transmissions lines in highly populated areas. With the new definition of "gas company," this subsection would significantly expand the application of the odorization rule. Without the recommended qualifications, every transmission line and many rural gathering lines would have to be fully odorized. TxOGA offered specific clarifying language.

The Commission disagrees with this comment. The new definition, while not identical to the wording in §7.71(a)(1), does not change the scope of the term. The Commission declines to make the suggested changes, because there will be no change in the application of this provision.

Regarding new subsection (c)(4), TxOGA and TPA commented that a requirement for an injection rate in connection with natural malodor does not make sense, because natural malodor is not injected into the gas. The Commission agrees with this comment and has adopted clarified wording in new §8.215(c)(4).

TPA and TxOGA commented that in §8.215(d)(1), the words, "the volume of odorant and shall calculate the injection rate," should be deleted because they do not make sense at this position in the rule. Subsection (d)(1)(H) already requires the reporting of the injection rate, so its mention at this earlier point is unnecessary. Similarly, subsection (d)(1)(D) and (F) both require the reporting of the quantity of malodorant, so the mention of volume at this earlier point in the rule is also unnecessary. The Commission agrees with this comment and has adopted clarified wording in subsection (d)(1).

In new §8.215(d)(1)(G), TxOGA suggested changing the wording to change the word "purchased" to "odorized"; the Commission agrees with this suggestion and adopts this changed wording. TPA and TxOGA also suggested that in this subparagraph and in §8.215(d)(1)(G), a reference to "MMBtu" should be added as an alternative measurement to MMcf to address transportation situations and centralized odorization operations. TPA suggested that the information required should be the volume of gas flowing thorough the odorizer during month/quarter. The revised wording should allow reporting in MMBtu, which is becoming an industry standard. The Commission disagrees with this comment and has not made the suggested change. Reporting in MMBtu may be an industry standard for utility billing purposes, but not for pipeline safety purposes. The volumetric measurement (MMcf) is necessary to calculate the injection rate; MMBtu is a measure of heating capacity, not volume.

In §8.215(d)(2), TxOGA suggested reconciling use of both "operator" and "gas company" by changing "gas company" to "operator." TPA made the opposite suggestion. The Commission agrees that this provision should be clarified. Because the definition of the term "operator" makes it applicable to operators of both natural gas pipelines and hazardous liquid pipelines, in §8.125(d)(2), the Commission has changed the term "operators" to "each natural gas operator," because this rule is applicable only to natural gas systems.

TxOGA and TPA both commented that §8.215(e)(1)(B)(iv) should be revised by inserting the word "gas" between "percent" and "in" to provide clarity. The Commission agrees and has adopted this refinement.

With respect to new §8.215(e)(3), both TxOGA and TPA suggested adding the modifier "sufficient" before the term "natural malodor," and striking the phrase "and therefore do not odorize the gas themselves." The Commission disagrees with this suggested change; the standard is well-understood and applied now; the amendments would add subjectivity and make it more difficult to enforce.

TPA commented regarding §8.220, Master Metered Systems. TPA observed that subsection (c) places the responsibility for overpressure protection at mater meter locations serving 10 or more low pressure customers on the natural gas supplier. This requirement is consistent with the current rule, but TPA pointed out that both the preamble and the rule itself are silent on the responsibility for overpressure protection at such master meter locations that were in existence prior to the adoption of the current rule, 16 Tex. Admin. Code §7.73. The preamble to that rulemaking made it clear that the rule would not apply retroactively; *see* 17 Tex. Reg. 9030, December 22, 1992. Even if the Commission intends to allow the language of new §8.1(f) to provide the industry protection against retroactive application of this rule before the original adoption date, this intent should be made clear either through the language of the preamble or through an express reference in the language of the rule to the original effective date of January 4, 1993.

The Commission crafted new §8.1(f) specifically to apply in all situations against retroactive application of this rule as well as other rules. The various retroactivity dates were "captured," as it were, in this one rule. The Commission considers the provisions of §8.220 to apply prospectively from the effective date of the original rule, January 4, 1993.

New §8.225 concerns plastic pipe requirements. Both TPA and TxOGA suggested deleting the last sentence of subsection (a) and paragraph (1) of subsection (b). These provisions pertain to an initial filing that was due on March 15, 2002, and to installation and/or removal information that was to have been filed on March 15, 2003, and March 15, 2004. The Commission disagrees with these comments but has modified this language to indicate that these deadlines have past. The deadlines are retained, however, for convenience in case there is a need to refer to them in an enforcement action.

TPA commented that the last sentence of subsection (b)(2)(D) should be deleted and revised to be a definition that is included in §8.5; this would further the consolidation of definitions. The Commission disagrees with this suggestion. This definition of "pipeline segment" is applicable only with respect to the plastic pipe requirements. The term "pipeline segment" could have a different meaning in the context of integrity management or steel pipe requirements.

With respect to §8.225(c), Both TPA and TxOGA suggested that the term "Commission" be changed to "Division" to provide consistency in the language of the rules. The Commission agrees and has made this change.

New §8.245, relating to Penalty Guidelines for Pipeline Safety Violations, was the subject of considerable comment. TPA endorsed the Commission's efforts to provide the industry with the guidelines for determining the administrative penalties to be assessed for violations of pipeline safety related rules and orders, and observed that these guidelines will facilitate discussions between industry and Commission staff in connection with any violations that may occur in the future. The Commission agrees with this comment.

TxOGA suggested, generally, that all of the tables associated with §8.245 should be clarified by designating the penalty amounts as the *maximum* amounts; *e.g.*, "Maximum Guideline Penalty Amount," "Maximum Enhancement Amount," and so on. The Commission disagrees with this statement; this proposed revision would be misleading by suggesting that the guidelines state the maximum penalties when that is not the case. The statutes establish the maximum penalty amounts. The Commission, in the exercise of its discretion, may impose penalties greater than those stated on the tables so long as they are within the statutory limit.

TPA suggested that the Commission could provide some additional clarity to the regulations by adding the phrase "within seven years" to the captions for Tables 3 and 4. Similarly, the captions within Table 5 between lines 36 and 37 and between lines 41 and 42 should be seven years, not five years. These changes would make the tables consistent with the text of the regulations. The Commission agrees and has made these changes in the adopted provisions.

TPA had another concern regarding the penalty guidelines. TPA pointed out that the typical penalties on Table 1 (which is part of new §8.245(d)) and on Table 5 (in new §8.245(i)) indicate a penalty amount of $10,000 for a violation of 16 Tex. Admin. Code §8.240 that is double the size of most of the other violations and ten times the size of most of the other violations, but that there is no rationale or justification given for this disparity. TPA recommended that the Commission reduce this guideline amount to no more than $5,000 in order to be consistent with other violations. TPA further stated that, because some of the components of 49 CFR Part 192 could have just as significant an impact on safety as a violation of 16 Tex. Admin. Code §8.240, a good argument can be made that this penalty guideline should be no higher than $1,000. In any case, TPA urged, the Commission should bring this penalty guideline in line with the other violations or provide very substantial reasons for such a significant disparity.

The Commission approved the penalty guidelines as an enforcement tool for the Commission staff. This rule merely places the guidelines in a rule, as required by the statute. The Commission, in the exercise of its discretion, may impose a penalty or not; it may impose a penalty greater or smaller than that stated on the table so long as the penalty is within the statutory limit.

TxOGA recommended that the Commission clarify new §8.245(e) by revising it to remove the phrase " or involve a person with a history of prior violations," and removing the eighth row in Table 2 relating to persons with a history of violations within seven years of the current enforcement action. TxOGA stated that the wording it proposed to delete is redundant to the provisions of proposed §8.245(f) and related Tables 3 and 4. As proposed, the two subsections implied that a person's penalty could be enhanced under §8.245(e) for a history of violations and again under §8.245(f) for the same violation history. TxOGA interprets the penalty enhancement provisions proposed in §8.245(e) and (f) to mean that a penalty enhancement may be applied under §8.245 only when there has already been a violation of the Commission's pipeline safety regulations and a determination has been made by the Commission that a penalty is appropriate. TxOGA requested that the Commission confirm that there is no intent to impose a penalty on an operator simply because there *is* an incident (e.g., third party damage to a pipeline) involving a bay, estuary, or marine habitat; residential or public area; hazardous material release, and so on.

The Commission agrees with TxOGA, and has adopted the proposed amended wording in the rule text and in Table 2. Section 8.245(f) is the appropriate provision for a penalty enhancement based on a history of prior violations. The revision clarifies that such an enhancement must be supported by a prior final administrative order or judgment finding the violation which has been entered against the person.

TxOGA suggested revising new §8.245(g) to add the word "negotiated" before the word "settlement" in the first sentence. TxOGA concurred with the concept of the Commission agreeing to reduce the recommended penalty by up to 50% if the person charged and the Commission negotiate a settlement before there is an administrative hearing to prosecute a violation. TxOGA's position is that settlement negotiations should be able to address both the penalty recommended by the Safety Division and the percent reduction; an operator should be given the opportunity to convince the Safety Division staff that either a violation did not exist or that the recommended penalty amount is out of line before a baseline amount is established. TxOGA also commented that it does not appear logical to preclude reductions of any proposed penalty enhancement amounts as part of settlement negotiations, because it will often be to the advantage of both parties to avoid the time and expense of a hearing. Application of unreduced penalty enhancements to a basic penalty - even with reductions to the basic penalty - is likely to provide a disincentive to settlement.

The Commission disagrees with this comment. Staff recommends penalty enhancements only in selected cases because of an identified egregious aspect of the violation. TxOGA's proposed revision would undercut the deterrent value of enhancements. The Commission declines to make any changes to subsection (g).

With respect to new §8.245(h), TxOGA commented that although the Commission may consider "demonstrated good faith" on the part of an operator, the wording does not suggest what action the Commission might take when it encounters this response from the operator. TxOGA offered proposed additional language that would state that the Commission " . . . may reduce the recommended penalty by an appropriate amount or eliminate it completely," to clarify that there will be instances, such as unintentional violations that are promptly taken care of when discovered, justifying application of a "demonstrated good faith" reduction or complete elimination of a penalty.

The Commission disagrees with this comment. The express purpose of Commission consideration of demonstrated good faith is to determine the penalty amount. The proposed added language is not necessary to clarify that the Commission always has the discretion to decide not only the penalty amounts but whether an operator's conduct has, in fact, demonstrated good faith.

*Subchapter A. General Requirements and Definitions.*

New Subchapter A, General Requirements and Definitions, includes new §8.1, relating to General Applicability and Standards, and new §8.5, relating to Definitions. Both rules are adopted with

changes from the proposals, as discussed in the preceding paragraphs.

New §8.1, General Applicability and Standards, is derived from current §§7.70, 7.81, and 7.82. New §8.1(a), concerning applicability, is derived from current §§7.70(c), 7.82, and the first sentence in current §7.70(d); it states the scope of the chapter, which applies to all gas pipeline facilities and facilities used in the intrastate transportation of natural gas, including master metered systems, as provided in 49 United States Code (U.S.C.) §60101, *et seq*., and Texas Utilities Code, Chapter 121; the intrastate pipeline transportation of hazardous liquids or carbon dioxide and all intrastate pipeline facilities as provided in 49 U.S.C. §60101, *et seq*., and Texas Natural Resources Code, Chapter 117; and all pipeline facilities originating in Texas waters (three marine leagues and all bay areas). These pipeline facilities include those production and flow lines originating at the well. This subsection specifically provides that the rules in Chapter 8 do not apply to those facilities and transportation services subject to federal jurisdiction under: 15 U.S.C. §717, *et seq.*, or 49 U.S.C. §60101, *et seq*.

New §8.1(b), concerning minimum safety standards, derives from current §§7.70(a) and 7.81, and adopts by reference the federal pipeline safety standards found in 49 U.S.C. §60101, *et seq.*; 49 Code of Federal Regulations (CFR) Part 191, Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports; 49 CFR Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; 49 CFR Part 193, Liquefied Natural Gas Facilities: Federal Safety Standards; 49 U.S.C. §60101, *et seq.*; 49 CFR Part 195, Transportation of Hazardous Liquids by Pipeline; and 49 CFR Part 199, Drug and Alcohol Testing.

Currently, §§7.70(a) and 7.81 adopt the federal pipeline safety standards as of March 21, 2002. New §8.1(b) will show this date as April 9, 2004. The federal safety rule amendments that will be captured are summarized in the following 12 paragraphs.

USDOT's Amendment No. 195-76, published at 67 Federal Register (FR) 2136, extended the regulations on managing the integrity of hazardous liquid and carbon dioxide pipelines that affect high consequence areas to operators with less than 500 miles of regulated pipelines. In 49 CFR §195.452(d)(2), the date after which prior assessments may qualify for use was incorrectly published as December 18, 2006. The corrected date is February 15, 1997. The effective date for the correction was February 15, 2002.

USDOT's Amendment 192-77, published at 67 FR 50824, defined areas of high consequence where the potential consequences of a gas pipeline accident may be significant or may do considerable harm to people and their property. The definition includes current class 3 and 4 locations; facilities with persons who are mobility-impaired, confined, or hard to evacuate; and places where people gather for recreational and other purposes. For facilities with mobility-impaired, confined, or hard-to-evacuate persons, and places where people gather, the corridor of protection from the pipeline is 300 feet, 660 feet, or 1,000 feet depending on the pipeline's diameter and operating pressure. The effective date was September 5, 2002.

USDOT's Research and Special Programs Administration (RSPA) published a final rule at 68 FR 11748 modifying or adding the definition of "administrator" in several sections of the Code of Federal Regulations for clarification and consistency between RSPA regulations. The changes were in 49 CFR Parts 107, 190, 191, 192, 193, 195, 198, and 199 - specifically, §§107.1, 190.3, 191.3, 192.3, 193.2007, 195.2, 198.3, and 199.3. The effective date was March 12, 2003.

USDOT published an interim final rule at 68 FR 31624 to amend a provision of its drug and alcohol testing procedures to change the instructions to medical review officers with respect to reporting specimens as dilute or substituted. The change was based on USDOT's experience since the adoption of the current rule and new scientific information on the subject. The effective date was May 28, 2003.

Amendment No. 40-12, published at 67 FR 43946, revised the Management Information System forms currently used within five USDOT agencies and the United States Coast Guard for submission of annual drug and alcohol program data. The five DOT agencies are the Federal Motor Carrier Safety Administration, the Federal Aviation Administration, the Federal Transit Administration, the Federal Railroad Administration, and the Research and Special Programs Administration. The single form replaced 21 different data collection forms. The effective date is July 25, 2003. Also, at 68 FR 75455, USDOT published a final rule requiring the use of this single form as adopted in 49 CFR Part 40. Following the July 25, 2003, adoption, USDOT had requested comments and suggestions for changes to the MIS form and process. The final rule responded to those comments and made modifications to the previous DOT agency MIS forms. Use of the new MIS form will be required for employer MIS submissions in 2004, which will document 2003 data. The effective date was December 31, 2003.

Amendments Nos. 191-15, 192-92, and 195-72, published at 68 FR 46109, addressed the safety regulation responsibility for producer-operated natural gas and hazardous liquid pipelines that cross into State waters without first connecting to a transporting operator's facility on the Outer Continental Shelf. The rule specified the procedures by which producer operators can petition for approval to operate under safety regulations governing pipeline design, construction, operation, and maintenance issued by either RSPA or the Department of the Interior, Minerals Management Service. The effective date was September 4, 2003.

Amendment 195-78, published at 68 FR 53526, changed several safety standards for hazardous liquid and carbon dioxide pipelines. The changes, which concern welder qualifications, backfilling, records, training, and signs, were based on recommendations by the National Association of Pipeline Safety Representatives and were made to improve the clarity and effectiveness of the standards. The effective date was October 14, 2003.

Amendment 192-93, published at 68 FR 53895, changed some of RSPA's Office of Pipeline Safety's safety standards for gas pipelines. The changes were based on recommendations from the National Association of Pipeline Safety Representatives and a review of the recommendations by the State Industry Regulatory Review Committee. The changes improved the clarity and effectiveness of the standards. The effective date was October 15, 2003.

Amendment 192-95, published at 68 FR 69778, required operators to develop integrity management programs for gas transmission pipelines located where a leak or rupture could do the most harm, such as in high consequence areas. The rule required gas transmission pipeline operators to perform ongoing assessments of pipeline integrity, to improve data collection, integration, and analysis, to repair and remediate the pipeline as necessary,

and to implement preventive and mitigative actions. RSPA's Office of Pipeline Safety also modified the definition of high consequence areas in response to a petition for reconsideration from industry associations. The final rule addressed statutory mandates, safety recommendations, and conclusions from accident analyses, all of which indicate that coordinated risk control measures are needed to improve pipeline safety. The effective date was originally published as January 14, 2004, and included the incorporation by reference of certain publications; however, at 69 FR 2307, RSPA published a correction to change the effective date to February 14, 2004, to meet the 60-day requirement for Congressional review of major rules.

Amendment 40-13, published at 69 FR 3021, adds drug and alcohol abuse counselors certified by the National Board for Certified Counselors, Inc. and Affiliates, specifically NBCC's Master Addictions Counselor, to those eligible to be substance abuse professionals under 49 CFR Part 40, subpart O. The effective date was January 22, 2004.

Amendment 195-80, published at 69 FR 537, requires operators of pipeline systems subject to RSPA's hazardous liquid pipeline safety regulations to prepare and file annual reports containing information about those systems. The data will provide the basis for more efficient and meaningful analyses of the safety status of hazardous liquid pipelines. RSPA's Office of Pipeline Safety will use the information to compile a national pipeline inventory, identify and determine the scope of safety problems, and target inspections. The effective date was February 5, 2004.

Amendment 193-18, published at 69 FR 11330, clarifies that the operation, maintenance, and fire protection requirements of RSPA's Office of Pipeline Safety's regulations for liquefied natural gas (LNG) facilities apply to LNG facilities in existence or under construction as of March 31, 2000. An earlier final rule made the applicability of these requirements unclear. Additional changes to the regulations remove incorrect cross- references, clarify fire drill requirements, and require reviews of plans and procedures. The final rule also changes the regulations so that cross-references to the National Fire Protection Association standard NFPA 59A refer to the 2001 edition of the standard rather than the 1996 edition. The effective date was April 9, 2004; however, LNG plants existing on March 31, 2000, need not comply with provisions of 49 CFR §193.2801 on emergency shutdown systems, water delivery systems, detection systems, and personnel qualification and training until September 12, 2005. The final rule also incorporates by reference certain other publications.

New §8.1(c), derived from the second sentence of current §7.70(d) and §7.70(e), relates to special situations and specifically states the Commission's authority to impose more stringent safety requirements. This subsection also allows pipeline operators to seek waivers under the procedure set out in proposed new §8.125.

New §8.1(d), concerning concurrent filing, requires a person filing any document or information with the Department of Transportation pursuant to the requirements of 49 CFR Parts 190, 191, 192, 193, 195, or 199 to file a copy of that document or information with the Safety Division. The greater specificity regarding this requirement was suggested in comments.

New §8.1(e), concerning penalties, states the statutory source of authority for the Commission to impose penalties for submitting false or misleading information.

New §8.1(f), concerning retroactivity, states that nothing in this chapter shall be applied retroactively to any existing intrastate pipeline facilities concerning design, fabrication, installation, or established operating pressure, except as required by the Office of Pipeline Safety, Department of Transportation. All intrastate pipeline facilities shall be subject to the other safety requirements of this chapter.

New §8.5, Definitions, derives from §§7.70(b), 7.71(a), and 7.80; in addition, definitions from §7.74, relating to school piping testing, and §8.101, relating to pipeline integrity assessment, are included. In addition, the Commission also adopts by reference the definitions given in 49 CFR Parts 191, 192, 193, 195, and 199 for the purposes of this chapter. This new section includes definitions for many more terms than were defined in the pipeline safety rules in Chapter 7, and omits only one prior definition, that of "Act," that was found in §7.74(b)(1). By defining more terms, the Commission expects to achieve greater precision and consistency in the rules and, it is hoped, better understanding of the rules, and more uniformity in interpretation and application of the rules.

New §8.5(1), defines the term "affected person," which applies only to the procedures and requirements of new §8.125, relating to Waiver Procedure. The term includes but is not limited to persons owning or occupying real property within 500 feet of any property line of the site for the facility or operation for which the waiver is sought; the city council, as represented by the city attorney, the city secretary, the city manager, or the mayor, if the property that is the site of the facility or operation for which the waiver is sought is located wholly or partly within any incorporated municipal boundaries, including the extraterritorial jurisdiction of any incorporated municipality (if the site of the facility or operation for which the waiver is sought is located within more than one incorporated municipality, then the city council of every incorporated municipality within which the site is located is an affected person); the county commission, as represented by the county clerk, if the property that is the site of the facility or operation for which the waiver is sought is located wholly or partly outside the boundary of any incorporated municipality (if the site of the facility or operation for which the waiver is sought is located within more than one county, then the county commission of every county within which the site is located is an affected person; and any other person who would be impacted by the waiver sought. The proposed definition would have limited this latter group to only persons adversely impacted, but the adopted version eliminates this qualification in order to include persons who favor a safety waiver application.

New §8.5(2) defines the term "applicant" as a person who has filed with the Safety Division a complete application for a waiver to a pipeline safety rule or regulation, or a request to use direct assessment or other technology or assessment methodology not specifically listed in §8.101(b)(1). Prior rules did not define this term.

New §8.5(3) defines the term "application for waiver" as the written request, including all reasons and all appropriate documentation, for the waiver of a particular rule or regulation with respect to a specific facility or operation. The prior rules do not define this term.

New §8.5(4) defines "charter school" as an elementary or secondary school operated by an entity created pursuant to Texas Education Code, Chapter 12. This definition is identical to that found in current §7.74(b)(2).

New §8.5(5) defines "Commission" as the Railroad Commission of Texas, eliminating the identical duplicative definitions found in current §7.70(b)(6) and §7.80(1).

New §8.5(6) defines "direct assessment" as a structured process that identifies locations where a pipeline may be physically examined to provide assessment of pipeline integrity. The process includes collection, analysis, assessment, and integration of data, including but not limited to the items listed in §8.101(b)(1). The physical examination may include coating examination and other applicable non-destructive evaluation. This definition is derived from that found in current §8.101(a)(1)(A), modified for clarity based on comments.

New §8.5(7) defines "director" as the director of the Commission's Safety Division or the director's delegate. The term is not defined in the current rules.

New §8.5(8) defines "division" as the Safety Division of the Commission. The current rules do not define this term; rather the current rules refer to the Pipeline Safety Section of the Gas Services Division. The Safety Division was created in the Commission's reorganization in September 2003.

New §8.5(9) defines "farm tap odorizer" as a wick-type odorizer serving a consumer or consumers off any pipeline other than that classified as distribution as defined in 49 CFR Part 192.3 which uses not more than 10 mcf on an average day in any month. This is identical to the current definition of this term in §7.71(a)(2).

New §8.5(10) defines "gas" as natural gas, flammable gas, or other gas which is toxic or corrosive; this is the same definition as found in current §7.70(b)(2).

New §8.5(11) defines "gas company" as any person who owns or operates pipeline facilities used for the transportation or distribution of gas, including master metered systems. This combines the definitions currently found in §7.70(b)(5) and §7.71(a)(1), and eliminates the redundant provisions and references to federal regulations found in §7.71(a)(1) which are already incorporated by reference.

New §8.5(12) defines "hazardous liquid" as petroleum, petroleum products, anhydrous ammonia, or any substance or material which is in liquid state, excluding liquefied natural gas, when transported by pipeline facilities and which has been determined by the United States Secretary of Transportation to pose an unreasonable risk to life or property when transported by pipeline facilities. This is identical to the current definition of this term in §7.80(2).

New §8.5(13) defines "in-line inspection" as an internal inspection by a tool capable of detecting anomalies in pipeline walls such as corrosion, metal loss, or deformation. This is the same definition found in current §8.101(a)(1)(B).

New §8.5(14) defines "intrastate pipeline facilities" as pipeline facilities located within the State of Texas which are not used for the transportation of natural gas or hazardous liquids or carbon dioxide in interstate or foreign commerce. This is identical to the current definition of this term in §7.80(3).

New §8.5(15) defines "lease user" as a consumer who receives free gas in a contractual agreement with a pipeline operator or producer. This is the same definition as in current §7.71(a)(3).

New §8.5(16) defines "liquids company" as any person who owns or operates a pipeline or pipelines and/or pipeline facilities used for the transportation or distribution of any hazardous liquid, carbon dioxide, or anhydrous ammonia. This term is not defined in the current rules.

New §8.5(17) defines "master meter operator" as the owner, operator, or manager of a master metered system. This term is not defined in the current rules.

New §8.5(18) defines "master metered system" as a pipeline system other than one that has been designated as a local distribution system for distributing gas within but not limited to a definable area, such as a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter or by other means such as rents. The adopted definition is slightly amended from the proposal, based on comments.

New §8.5(19) defines "natural gas supplier" as the entity selling and delivering the natural gas to a school facility or a master metered system. If more than one entity sells and delivers natural gas to a school facility or master metered system, each entity is a natural gas supplier for purposes of this chapter. This definition is similar to that found in current §7.74(b)(3), but by changing the current rule from "the individual or company selling and delivering the natural gas to a school facility" to "the entity selling and delivering the natural gas to a school facility or a master metered system," the Commission intends to include as "natural gas suppliers" those municipally-owned gas systems that sell and deliver natural gas to master metered systems.

New §8.5(20) defines "operator" as a person who operates on his or her own behalf or is an agent designated by the owner to operate intrastate pipeline facilities. This definition is derived from the prior definition found in §7.80(4), but has been modified for clarity based on comments.

New §8.5(21) defines "person" as any individual, firm, joint venture, partnership, corporation, association, cooperative association, joint stock association, trust, or any other business entity, including any trustee, receiver, assignee, or personal representative thereof, a state agency or institution, a county, a municipality, or school district or any other governmental subdivision of this state. As proposed, this definition combines and reconciles the two slightly different definitions of the word "person" found in current §7.70(b)(1) and §7.80(5).

New §8.5(22) defines "person responsible for a school facility" as, in the case of a public school, the superintendent of the school district as defined in Texas Education Code, §11.201, or the superintendent's designee previously specified in writing to the natural gas supplier. In the case of charter and private schools, person responsible for a school facility is the principal of the school or the principal's designee previously specified in writing to the natural gas supplier. This definition is the same as that found in current §7.74(b)(4).

New §8.5(23) defines the term "pipeline facilities" as new and existing pipe, right-of-way, and any equipment, facility, or building used or intended for use in the transportation of gas or hazardous liquids or their treatment during the course of transportation. This proposed definition combines and reconciles the slightly different definitions of the term found in current §7.70(b)(4) and §7.80(6).

New §8.5(24) defines "pressure test" as those techniques and methodologies prescribed for leak-test and strength-test requirements for pipelines. For natural gas pipelines, the requirements

are found in 49 Code of Federal Regulations (CFR) Part 192, and specifically include 49 CFR §§192.505, 192.507, 192.515, and 192.517. For hazardous liquids pipelines, the requirements are found in 49 CFR Part 195, and specifically include 49 CFR §§195.305, 195.306, 195.308, and 195.310. This definition is identical to that found in current §8.101(a)(1)(C).

New §8.5(25) defines "private school" as an elementary or secondary school operated by an entity accredited by the Texas Private School Accreditation Commission. This definition is the same as that found in current §7.74(b)(5).

New §8.5(26) defines "public school" as an elementary or secondary school operated by an entity created in accordance with the laws of the State of Texas and accredited by the Texas Education Agency pursuant to Texas Education Code, Chapter 39, Subchapter D. The term does not include programs and facilities under the jurisdiction of the Texas Department of Mental Health and Mental Retardation, the Texas Youth Commission, the Texas Department of Human Services, the Texas Department of Criminal Justice or any probation agency, the Texas School for the Blind and Visually Impaired, the Texas School for the Deaf and Regional Day Schools for the Deaf, the Texas Academy of Mathematics & Science, the Texas Academy of Leadership in the Humanities, and home schools or proprietary schools as defined in Texas Education Code, §132.001. This definition is the same as that found in current §7.74(b)(6).

New §8.5(27) defines "school facility" as all piping, buildings and structures operated by a public, charter, or private school that are downstream of a meter measuring natural gas service in which students receive instruction or participate in school sponsored extracurricular activities, excluding maintenance or bus facilities, administrative offices, and similar facilities not regularly utilized by students. This is identical to the definition in current §7.74(b)(7).

The Commission is not adopting the proposed definition of "Secretary" in §8.5(28) because, as pointed out in comments, it is unnecessary. Subsequent definitions have therefore been renumbered.

New §8.5(28) (proposed as §8.5(29)) defines "transportation of gas" as the gathering, transmission, or distribution of gas by pipeline or its storage within the State of Texas. For purposes of safety regulation, the term shall not include the gathering of gas in those rural locations which lie outside the limits of any incorporated or unincorporated city, town, village, or any other designated residential or commercial area such as a subdivision, a business or shopping center, a community development, or any similar populated area which the Secretary may define as a nonrural area. This definition is substantially the same as that found in current §7.70(b)(3) but has been reworded for clarity.

New §8.5(29) (proposed as §8.5(30)) defines "transportation of hazardous liquids or carbon dioxide" as the movement of hazardous liquids or carbon dioxide by pipeline, or their storage incidental to movement, except that, for purposes of safety regulations, it does not include any such movement through gathering lines in rural locations or production, refining, or manufacturing facilities or storage or in-plant piping systems associated with any of those facilities. This proposed definition adds "carbon dioxide" to the definition, but otherwise is identical to that found in current §7.80(8).

*Subchapter B. Requirements for All Pipelines.*

New rules in Subchapter B, Requirements for All Pipelines, include new §8.51, Organization Report; new §8.105, Records; §8.115, New Construction Commencement Report; §8.125, Waiver Procedure, and §8.130, Enforcement, which join §8.101, Pipeline Integrity Assessment and Management Plans for Natural Gas and Hazardous Liquids Pipelines, as amended. Of these sections, §8.110 is not adopted; §8.130 is adopted without changes to the proposal; and the remaining rules in Subchapter B are adopted with changes, as discussed in preceding paragraphs.

New §8.51 states the requirement that all gas and liquids companies, other than a master meter operator, not otherwise required to file a Form P-5, organization report, file one in compliance with 16 Tex. Admin. Code §3.1, relating to Organization Report; Retention of Records; Notice Requirements. A new subsection (b) sets out the requirements for master meter operators and clarifies that they must file an organization report (Form P-5), pursuant to Texas Utilities Code, §121.201, but are not required to furnish financial security required by Texas Natural Resources Code, §91.109(b)(2), if the operation of one or more master metered systems is the only business for which the financial security would otherwise be required. While the new rule does not derive specifically from a prior rule in Chapter 7, the requirement itself is not new, because the provision in Texas Utilities Code, §121.201, was enacted in 1999.

The amendments to §8.101, Pipeline Integrity Assessment and Management Plans for Natural Gas and Hazardous Liquids Pipelines, remove the definitions for "direct assessment," "in-line inspection," and "pressure test" that are being adopted in new 8.5. In subsection (b), the amended wording recognizes that one deadline has passed. In addition, consistent with comments, the Commission adopts the deadlines in the federal pipeline safety regulations for intrastate natural gas pipelines. The current deadlines for hazardous liquids pipelines remain.

New §8.105, Records, combines the requirements found in §§7.70(h) and 7.84(f) into a single rule applicable to both gas and liquids pipelines. The Commission modified the wording in those rules to achieve specificity and clarity; the wording has been further refined based on comments. Operators must maintain the specified most current record or records for at least the time period prescribed or five years if no other time period is specified. Gas and LNG pipeline operators must retain those records and documents required by 49 CFR Parts 191, 192, 193, and 199, and §8.215 of this chapter (relating to Odorization of Gas). Operators of hazardous liquids pipelines must retain those records and documents required by 49 CFR Parts 195 and 199. Activities for which records may be required to be retained include but are not limited to records of all design and installation of new and used pipe, including design pressure calculations, pipeline specifications, specified minimum yield strength and wall-thickness calculations, each valve, fitting, fabricated branch connection, closure, flange connection, station piping, fabricated assembly, and above-ground breakout tank; records of all pipeline construction, procedures, training, and inspection pertaining to welding, nondestructive testing, and cathodic protection; records of all hydrostatic testing performed on all pipeline segments, components, and tie-ins; and records involved in the performance of the procedures outlined in the operations and maintenance procedure manual.

Based on comments, the Commission does not adopt proposed new §8.110, Operations and Maintenance Procedures, which

was derived from prior §§7.70(i) and 7.84(d). Federal rules incorporated by reference already require the preparation and use of operations and maintenance (O&M) manuals. Deleting this rule will eliminate the unnecessary provision that requires operators to submit O&M manuals to the Commission 20 days prior to the effective date. The Commission already has the authority to require that an operator revise its O&M plan if the Commission finds the plan is inadequate to achieve safe operation.

New §8.115 is adopted with an amended title, "New Construction Commencement Report." The rule combines the requirements of §§7.70(g)(4) and 7.84(c) and applies to all construction totaling one mile or more except for new construction on natural gas distribution systems of less than five miles. The proposed rule was modified based on comments to clarify that it applies to new construction, not to construction undertaken for public health, safety, or environmental emergencies, or for repairs and maintenance, including replacement of existing lines. Section §7.70(g)(4) applied only to gas pipelines and only to construction of five miles or more; there was no minimum length specified in §7.84(c). Under the new rule, at least 30 days prior to commencement of new construction of any installation totaling one mile or more of pipe except on natural gas distribution and master metered systems, and commencement of new construction of any installation totaling five or more miles on natural gas distribution and master metered systems, each operator is required to file with the Commission a report stating the proposed originating and terminating points for the pipeline, counties to be traversed, size and type of pipe to be used, type of service, design pressure, and length of the proposed line. The Commission staff needs to be aware of significant new pipeline construction in the state and to be able to better manage the inspection schedule.

New §8.125, Waiver Procedure, formalizes the process for obtaining Commission waiver of compliance with safety rules that the Commission has used for at least 10 years on an informal basis. Modified based on comments, the Commission adopts this rule with a new subsection (a) that states the purpose and scope of the rule. The Commission considers waiver applications to be properly based on a technical inability to comply with the pipeline safety standards set forth in this chapter, related to the specific configuration, location, operating limitations, or available technology for a particular pipeline. Generally, an application for waiver of a pipeline safety rule is site- specific. Cost is generally not a proper objection to compliance by the operator with the pipeline safety standards set forth in this chapter, and a waiver filed simply to avoid the expense of safety compliance is generally not appropriate.

New subsection (b) (proposed as subsection (a)) provides the method for filing an application for a waiver of a pipeline safety rule and the procedures the agency will follow in processing such applications. The Commission specifically directs that the Safety Division will not assign a docket number to or consider any application filed in response to a notice of violation of a pipeline safety rule. Based on comments, the Commission has adopted this provision with additional clarifying language.

New subsection (c) (proposed as subsection (b)) provides details about the form of the application for waiver, and new subsection (d) (proposed as subsection (c)) specifies the contents of the application. Essential to the application are a description of the facility at which the operation that is the subject of the waiver request is conducted, including, if necessary, design and operation specifications, monitoring and control devices, maps, calculations, and test results; a description of the acreage and/or address upon which the facility and/or operation is located, including a plat drawing, identification of the site, environmental surroundings, placement of buildings and areas intended for human occupancy that could be endangered by a failure or malfunction of the facility or operation, any increased risks the particular operation would create if the waiver were granted, and the additional safety measures that are proposed to compensate for those risks; a statement of the reason the particular operation, if the waiver were granted, would not be inconsistent with pipeline safety; and a list of the names, addresses, and telephone numbers of all affected persons. The standard for granting a waiver was changed, based on comments.

New subsection (e) (proposed as subsection (d)) out the requirements of the notice that the applicant is required to provide. The applicant must send a copy of the application and a notice of protest form published by the Commission by certified mail, return receipt requested, to all affected persons on the same date the applicant files its application with the Division. The notice must describe the nature of the waiver sought; state that affected persons have 30 calendar days from the date of the last publication to file written objections or requests for a hearing with the Division; and include the docket number of the application and the mailing address of the Division. The applicant must file all return receipts with the Division as proof of notice. In addition, the applicant is required to publish notice of its application for waiver of a pipeline safety rule once a week for two consecutive weeks in the state or local news section of a newspaper of general circulation in the county or counties in which the facility or operation for which the requested waiver is located, and must file with the Division a publisher's affidavit from each newspaper in which notice was published as proof of publication of notice. The director may require the applicant to give additional or different types of notice.

New subsection (f) (proposed as subsection (e)) provides that affected persons have standing to object to, support, or request a hearing on an application for a waiver, and sets forth the procedure and requirements for doing so. The Commission includes express authority for persons to support an application for a safety waiver, based on comments.

New subsection (g) (proposed as subsection (f)) details the process for the director's review of a waiver application. If the director does not receive any objections or requests for a hearing from any affected person, the director may recommend in writing that the Commission grant the waiver if granting the waiver is not inconsistent with pipeline safety. This standard was amended, based on comments, to match the standard found in the federal pipeline safety rules. The director must then forward the file, along with the written recommendation that the waiver be granted, to the Office of General Counsel for the preparation of an order. The rule specifically provides that the director may not recommend that the Commission grant the waiver if the application was filed either to correct an existing violation or to avoid the expense of safety compliance, and requires the director to dismiss with prejudice to refiling an application filed in response to a notice of violation of a pipeline safety rule. If the director declines to recommend that the Commission grant the waiver, the director must notify the applicant in writing of the recommendation and the reason for it, and inform the applicant of any specific deficiencies in the application. If the director declines to recommend that the Commission grant the waiver,

and if the application was not filed either to correct an existing violation or solely to avoid the expense of safety compliance, the applicant may either modify the application to correct the deficiencies and resubmit the application or file a written request for a hearing on the matter within ten calendar days of receiving notice of the assistant director's written decision not to recommend that the Commission grant the application.

New subsection (h) (proposed as subsection (g)) sets forth the procedures for hearings on applications for waiver of a pipeline safety rule. Within three days of receiving either a timely-filed objection or a request for a hearing, the director forwards the file to the Office of General Counsel for the setting of a hearing. Based on comments, the Commission has added a requirement that within three days of receiving the file, the Office of General Counsel must assign a presiding examiner to conduct a hearing as soon as practicable. The presiding examiner must mail notice of the hearing by certified mail, return receipt requested, not less than 30 calendar days prior to the date of the hearing to the applicant, all persons who filed an objection or a request for a hearing, and all other affected persons. The presiding examiner conducts the hearing in accordance with the procedural requirements of Texas Government Code, Chapter 2001 (the Administrative Procedure Act), and Chapter 1 of Title 16 (the Commission's rules of practice and procedure).

New subsection (i) (proposed as subsection (h)) provides that after a hearing, the Commission may grant a waiver of a pipeline safety rule based on a finding or findings that the grant of the waiver is not inconsistent with pipeline safety.

New subsection (j) (proposed as subsection (i)) sets out the procedure by which notice is given to the United States Department of Transportation. The Commission's grant of a waiver becomes effective in accordance with the provisions of 49 United States Code Annotated, §60118(d).

New §8.130, Enforcement, is derived from §7.70(j) and §7.87, and provides for periodic inspections and company obligations. Subsection (a) states that the Safety Division shall have responsibility for the administration and enforcement of the provisions of this chapter. To this end, the Safety Division shall formulate a plan or program for periodic evaluation of the books, records, and facilities of gas companies and liquids companies operating in Texas on a sampling basis, in order to satisfy the Commission that these companies are in compliance with the provisions of this chapter.

New §8.130(b) lists the scope of inspection and provides that, upon reasonable notice, the Safety Division or its authorized representative may, at any reasonable time, inspect the books, files, records, reports, supplemental data, other documents and information, plant, property, and facilities of a gas company or a liquids company to ensure compliance with the provisions of this chapter .

New subsection (c) lists the company obligations and states that each operator, officer, employee, and representative of a gas company or a liquids company operating in Texas shall cooperate with the Safety Division and its authorized representatives in the administration and enforcement of the provisions of this chapter; in the determination of compliance with the provisions of this chapter; and in the investigation of violations, alleged violations, accidents or incidents involving intrastate pipeline facilities. Each operator, officer, employee, and representative of a gas company or a liquids company operating in Texas shall make readily available all company books, files, records, reports, supplemental data, other documents, and information, and shall make readily accessible all company plant, property, and facilities as the Safety Division or its authorized representative may reasonably require in the administration and enforcement of the provisions of this chapter; in the determination of compliance with the provisions of this chapter; and in the investigation of violations, alleged violations, accidents or incidents involving intrastate pipeline facilities.

*Subchapter C. Requirements for Natural Gas Pipelines Only.*

New rules in Subchapter C include §8.201, Pipeline Safety Program Fees, as amended; new §8.203, Supplemental Regulations; new §8.205, Written Procedure for Handling Natural Gas Leak Complaints; new §8.210, Reports; new §8.215, Odorization of Gas; new §8.220, Master Metered Systems; new §8.225, Plastic Pipe Requirements; new §8.230, School Piping Testing; current §8.235, Natural Gas Pipelines Public Education and Liaison, as amended; §8.240, Discontinuance of Service; and new §8.245, Penalty Guidelines for Pipeline Safety Violations.

Amendments to §8.201, relating to Pipeline Safety Program Fees, concern the per-service line surcharge that natural gas distribution systems may assess customers to recover the amounts remitted to the Commission, and which customers may be assessed the one-time surcharge. In subsection (b)(3)(D), the surcharge amount is changed from the current $0.37 per service line to $0.50 per service line, the statutory maximum under Texas Utilities Code, § 121.211, to minimize potential under- recoveries by the distribution utilities.

In subsection (b)(4) and subsection (c)(4), the Commission makes amendments to recognize that pipeline safety matters are now handled by the Safety Division, created in the agency's September 2003 reorganization. The amendments to these subsections add the Safety Division as a recipient of the reports required from operators of natural gas distribution systems and master metered systems.

New §8.203, Supplemental Regulations, derives from current §7.70(k). The Commission modified the wording to achieve specificity and clarity, but the substance of the provisions is unchanged from prior requirements. These provisions supplement the regulations appearing in 49 CFR Part 192, adopted under new §8.1(b).

New §8.203(1) provides that Section 192.3 is supplemented by the following: "Short section of pipeline" means a segment of a pipeline 100 feet or less in length.

New §8.203(2) provides that Section 192.455(b) is supplemented by the following language after the first sentence: "Tests, investigation, or experience must be backed by documented proof to substantiate results and determinations."

New §8.203(3) provides that Section 192.457 is supplemented by the following language in subsection (b)(3): "(3) Bare or coated distribution lines. The operator shall determine the areas of active corrosion by electrical survey, or where electrical survey is impractical, by the study of corrosion and leak history records, by leak detection survey, or by other effective means, documented by data substantiating results and determinations"; and by the following subsection: "(d) When a condition of active external corrosion is found, positive action must be taken to mitigate and control the effects of the corrosion. Schedules must be established for application of corrosion control. Monitoring effectiveness must be adequate to mitigate and control the

effects of the corrosion prior to its becoming a public hazard or endangering public safety."

New §8.203(4) provides that Section 192.465 is supplemented by the following language after the first sentence of subsection (a): "Test points (electrode locations) used when taking pipe-to-soil readings for determining cathodic protection shall be selected so as to give representative pipe-to-soil readings. Test points (electrode locations) over or near an anode or anodes shall not, by themselves, be considered representative readings"; by the following language in subsection (e): "(e) After the initial evaluation required by paragraphs (b) and (c) of §192.455 and paragraph (b) of §192.457, each operator shall, at intervals not exceeding three years, reevaluate its unprotected pipelines and cathodically protect them in accordance with this subpart in areas in which active corrosion is found. The operator shall determine the areas of active corrosion by electrical survey, or where electrical survey is impractical, by the study of corrosion and leak history records, by leak detection survey, or by other effective means, documented by data substantiating results and determinations"; and by the following subsection: "(f) When leak detection surveys are used to determine areas of active corrosion, the survey frequency must be increased to monitor the corrosion rate and control the condition. The detection equipment used must have sensitivity adequate to detect gas concentration below the lower explosive limit and be suitable for such use."

New §8.203(5) provides that Section 192.475(a) is supplemented by the following language at the end: "Corrosive gas" means a gas which, by chemical reaction with the pipe to which it is exposed, usually metal, produces a deterioration of the material."

New §8.203(6) provides that Section 192.479 is supplemented by the following subsection: "(c) 'atmospheric corrosion' means aboveground corrosion caused by chemical or electrochemical reaction between a pipe material, usually a metal, and its environment, that produces a deterioration of the material."

New §8.205, Written Procedures for Handling Natural Gas Leak Complaints, derives from §7.72. The Commission modified the wording to achieve specificity and clarity, but the substance of the provisions is unchanged from prior requirements. Each gas company must have written procedures which must include, at a minimum, the following: a procedure or method for receiving leak complaints or reports, or both, on a 24-hour, seven day per week basis; a requirement to make and maintain a written record of all calls received and actions taken; a requirement that supervisory personnel review calls received and actions taken to insure no hazardous conditions exist at the close of the work day; standards for training and equipping personnel used in the investigation of leak complaints or reports, or both; procedures for locating the source of a leak and determining the degree of hazard involved; a chain of command for service personnel to follow if assistance is required in determining the degree of hazard; and instructions to be issued by service personnel to customers or the public or both, as necessary, after a leak is located and the degree of hazard determined.

New §8.210, Reports, derives from current §7.70(g). The Commission modified the wording to achieve specificity and clarity, but the substance of the provisions is unchanged from prior requirements.

New §8.210(a)(1) requires a gas company, at the earliest practical moment or within two hours following discovery, to notify the Commission by telephone of any event that involves a release of gas from any pipeline which caused a death or any personal injury requiring hospitalization; required taking any segment of a transmission line out of service, with one exception; resulted in unintentional gas ignition requiring emergency response; caused estimated damage to the property of the operator, others, or both totaling $5,000 or more, including gas loss; or could reasonably be judged as significant because of location, rerouting of traffic, evacuation of any building, media interest, etc., even though it does not fall within the other event descriptions of this paragraph.

New §8.210(a)(2) provides the exception to the requirement that a gas company give notice of any release of gas which required taking a segment of a transmission line out of service. The gas company is not required to make a telephonic report for a leak or incident if that leak or incident occurred solely as a result of or in connection with planned or routine maintenance or construction.

New §8.210(a)(3) provides that the telephonic report must be made to the Commission's 24-hour emergency line at (512) 463-6788 and must include the following information: the operator or gas company's name; the location of the leak or incident; the time of the incident or accident; the fatalities and/or personal injuries; the phone number of the operator; and any other significant facts relevant to the accident or incident.

New §8.210(a)(4) provides that following the initial telephonic report for accidents, leaks, or incidents that caused a death or any personal injury requiring hospitalization, caused estimated damage to the property of the operator, others, or both totaling $50,000 or more, including gas loss, or could reasonably be judged as significant because of location, rerouting of traffic, evacuation of any building, media interest, etc., the operator who made the telephonic report must submit to the Commission a written report summarizing the accident or incident. The report must be submitted as soon as practicable within 30 calendar days after the date of the telephonic report. The written report must be made in duplicate on forms supplied by the Department of Transportation. The Division must forward one copy to the Department of Transportation. The written report is not required to be submitted for master metered systems, but the Commission may require an operator to submit a written report for an accident or incident not otherwise required to be reported.

New §8.210(b) requires that each gas company submit an annual report for its systems in the same manner as required by 49 CFR Part 191. The report must be submitted to the Division in duplicate on forms supplied by the Department of Transportation not later than March 15 of each year for the preceding calendar year. The Division forwards one copy to the Department of Transportation. The annual report is not required to be submitted for a petroleum gas system, as that term is defined in 49 CFR §192.11, which serves fewer than 100 customers from a single source or a master metered system.

New §8.210(c) requires each gas company to submit to the Division in writing a safety-related condition report for any condition outlined in 49 CFR Part 191.23. As adopted, the rule incorporates the corrected citation to the federal rules, based on a comment.

New §8.210(d) requires that within 60 days of completion of underwater inspection, each operator must file with the Division a report of the condition of all underwater pipelines subject to 49 CFR 192.612(a).

New §8.215, Odorization of Gas, derives from §7.71. The Commission modified that rule's organization and wording to achieve specificity and clarity, but the substance of the provisions is unchanged.

New §8.215(a) requires each gas company to continuously odorize gas by the use of a malodorant agent as set forth in the section unless the gas contains a natural malodor or is odorized prior to delivery by a supplier. Unless required by 49 CFR Part 192.625(B) or otherwise by this section, odorization is not required for gas in underground or other storage; gas used or sold primarily for use in natural gasoline extraction plants, recycling plants, chemical plants, carbon black plants, industrial plants, or irrigation pumps; or gas used in lease and field operation or development or in repressuring wells. Gas must be odorized by the user if the gas is delivered for use primarily in one of the activities or facilities listed in paragraph (2) of subsection (a) and is also used in one of those activities for space heating, refrigeration, water heating, cooking, and other domestic uses; or the gas is used for furnishing heat or air conditioning for office or living quarters. In the case of lease users, the supplier must ensure that the gas will be odorized before being used by the consumer.

New §8.215(b) requires gas companies to use odorization equipment approved by the Commission as provided in the subsection. Commercial manufacturers of odorization equipment manufactured under accepted rules and practices of the industry must submit plans and specifications of such equipment to the Division with Form PS-25 for approval of standardized models and designs. The Division maintains a list of approved commercially available odorization equipment.

Each operator is required to maintain a list of odorization equipment used in its particular operations, including the location of the odorization equipment, the brand name, model number, and the date last serviced. This list must be available for review during safety evaluations by the Division.

Prior to using shop-made or other odorization equipment not approved by the Commission under paragraph (1) of subsection (b), a gas company must submit to the Division Form PS-25 and plans and specifications for the equipment. Within 30 days of receiving Form PS-25 and related documents, the Division shall recommend in writing to notify the gas company in writing whether the equipment is approved or not approved for the requested use.

New §8.215(c) provides that the Division will maintain a list of approved malodorants which meet certain criteria. The malodorant when blended with gas in the amount specified for adequate odorization of the gas must not be deleterious to humans or to the materials present in a gas system and shall not be soluble in water to a greater extent than 2 1/2 parts by weight of malodorant to 100 parts by weight of water. The products of combustion from the malodorant must be nontoxic to humans breathing air containing the products of combustion and the products of combustion must not be corrosive or harmful to the materials to which such products of combustion would ordinarily come in contact. The malodorant agent to be introduced in the gas, or the natural malodor of the gas, or the combination of the malodorant and the natural malodor of the gas must have a distinctive malodor so that when gas is present in air at a concentration of as much as 1.0% or less by volume, the malodor is readily detectable by an individual with a normal sense of smell. The level of natural malodor or the injection rate of approved malodorant must be sufficient to achieve the specified requirements. The wording in this subsection was amended for clarity, based on comments.

New §8.215(d) requires each gas company to record as frequently as necessary to maintain adequate odorization, but not less than once each quarter, the specified malodorant information for all odorization equipment, except farm tap odorizers. The following information must be recorded and retained in the company's files odorizer location; brand name and model of odorizer; name of malodorant, concentrate, or dilute; quantity of malodorant at beginning of month/quarter; amount added during month/quarter; quantity at end of month/quarter; MMcf of gas odorized during month/quarter; and the injection rate per MMcf. Wording in this subsection was changed for clarity, based on comments.

Gas companies must check, test, and service farm tap odorizers at least annually according to the terms of the approved schedule of service and maintenance for farm tap odorizers Form PS-9, filed with and approved by the Division. Each gas company must maintain records to reflect the date of service and maintenance on file for at least two years.

New §8.215(e) requires each gas company to conduct the following concentration tests on the gas supplied through its facilities and required to be odorized. Other tests conducted in accordance with procedures approved by the Division may be substituted for the following room and malodorant concentration test meter methods. Test points must be distant from odorizing equipment, so as to be representative of the odorized gas in the system. Tests must be performed at least once each calendar year or at such other times as the Division may reasonably require. The results of these tests must be recorded on the approved odorant concentration test Form PS-6 or equivalent and retained in each company's files for at least two years.

For a room test, the test results must include the odorizer name and location; the date the test was performed, test time, location of test, and distance from odorizer, if applicable; the percent gas in air when malodor is readily detectable; and signatures of witnesses to the test and the supervisor of the test.

For a malodorant concentration test meter, the test results must include the odorizer name and location; the malodorant concentration meter make, model, and serial number; the date the test was performed, test time, odorizer tested, and distance from odorizer, if applicable; the test results indicating percent gas in air when malodor is readily detectable; and signature of person performing the test. Wording in this subparagraph was clarified, based on comments.

Farm tap odorizers are exempt from the odorization testing requirements. Gas companies that obtain gas into which malodorant previously has been injected or gas which is considered to have a natural malodor and therefore do not odorize the gas themselves are required to conduct quarterly malodorant concentration tests and retain records for a period of two years.

New §8.220, Master Metered Systems, derives from current 7.73. The Commission has modified the current rule's organization and wording to achieve specificity and clarity, but the substance of the provisions is unchanged from current requirements.

New §8.220(a) requires each master meter operator to comply with the minimum safety standards in 49 CFR Part 192.

New §8.220(b) requires each master meter operator to conduct a leakage survey on the system every two years, using leak detection equipment.

New §8.220(c) requires natural gas suppliers to be responsible for installation and inspection of overpressure equipment at those master meter locations where 10 or more consumers are served low pressure gas.

New §8.225, Plastic Pipe Requirements, derives from §7.70(g)(2)(C); (g)(5); and (g)(6). The Commission modified that rule's organization and wording to achieve specificity and clarity, but the substance of the provisions is unchanged.

New §8.225(a) requires each operator to record information relating to each material failure of plastic pipe during each calendar year, and annually to file with the Division, in conjunction with the annual report, a summary of the failures, using Form PS-80, Annual Plastic Pipe Failure Report. Upon adoption, the Commission amended the sentence requiring the filing of the initial Forms PS-80, reporting plastic pipe failure data for calendar year 2001, because the due date, March 15, 2002, has already passed.

New §8.225(b) provides that by March 15, 2003, and March 15, 2004, operators must have reported on Form PS-82, Annual Report of Plastic Installation and/or Removal, the amount, in miles, of plastic pipe installed and/or removed during the preceding calendar year. The mileage must be further identified by system, nominal pipe size, material designation code, pipe category, and pipe manufacturer. For all new installations of plastic pipe, each operator must record and maintain for the life of the pipeline the following information for each pipeline segment: all specification information printed on the pipe; the total length; a citation to the applicable joining procedures used for the pipe and the fittings; and the location of the installation to distinguish the end points. A pipeline segment is defined as a continuous piping where the pipe specification required by ASTM D2513 or ASTM D2517 does not change. Upon adoption, the Commission amended the wording regarding the filing deadlines because they have already passed.

New §8.225(c) provides that beginning March 15, 2005, and annually thereafter, each operator must report to the Division the amount of plastic pipe in natural gas service as of December 31 of the previous year. The amount of plastic pipe must be determined by a review of the records of the operator and reported on Form PS-81, Plastic Pipe Inventory. The report must include the system; miles of pipe; calendar year of installation; nominal pipe size; material designation code; pipe category; and pipe manufacturer.

New §8.225(d) requires that operators of systems with more than 1,000 customers file the required reports electronically in a format specified by the Commission.

New §8.225(e) provides that operators complete all required forms in accord with the section, including signatures of company officials. The Commission may consider the failure of an operator to complete all forms as required to be a violation under Texas Utilities Code, Chapter 121, and may seek penalties as permitted by that chapter.

New §8.230, School Piping Testing, derives from current 7.74. The Commission has modified the current rule's organization by moving the definitions from current §7.74(a) to new §8.5 and re-lettering the remaining subsections; otherwise, the substance of the current provisions is unchanged from current requirements.

New §8.230(a) states the purpose of this section as being the implementation of the requirements of Texas Utilities Code, §§121.5005-121.507, relating to the testing of natural gas piping systems in school facilities.

New §8.230(b) requires natural gas suppliers to develop procedures for receiving written notice from a person responsible for a school facility, specifying the date and result of each test; and terminating natural gas service to a school facility in the event that the natural gas supplier receives notification of a hazardous natural gas leak in the school facility piping system pursuant to this rule, or the natural gas supplier does not receive written notification specifying the date that testing has been completed on a school facility and the results of such testing. A natural gas supplier may rely on a written notification that complies with the rule as proof that a school facility is in compliance with Texas Utilities Code, §§121.5005-121.507, and the rule. A natural gas supplier has no duty to inspect a school facility for compliance with Texas Utilities Code, §§121.5005-121.507.

New §8.230(c) states that a natural gas piping pressure test performed under a municipal code in compliance with the rule satisfies the testing requirements. A pressure test to determine if the natural gas piping in each school facility will hold at least normal operating pressure must be performed as specified. For systems on which the normal operating pressure is less than 0.5 psig, the test pressure must be 5 psig and the time interval 30 minutes. For systems on which the normal operating pressure is 0.5 psig or more, the test pressure must be 1.5 times the normal operating pressure or 5 psig, whichever is greater, and the time interval 30 minutes. A pressure test using normal operating pressure may be utilized only on systems operating at 5 psig or greater, and the time interval must be one hour. The testing must be conducted by a licensed plumber; a qualified employee or agent of the school who is regularly employed as or acting as a maintenance person or maintenance engineer; or a person exempt from the plumbing license law as provided in Texas Civil Statutes, Article 6243-101, §3.

The testing of public school facilities must be completed as follows: for school facilities tested prior to the beginning of the 1997-1998 school year, at least once every two years thereafter before the beginning of the school year; for school facilities not tested prior to the beginning of the 1997-1998 school year, as soon as practicable thereafter but prior to the beginning of the 1998-1999 school year and at least once every two years thereafter before the beginning of the school year; for school facilities operated on a year-round calendar and tested prior to July 1, 1997, at least once every two years thereafter; and for school facilities operated on a year-round calendar and not tested prior to July 1, 1997, once prior to July 1, 1998, and at least once every two years thereafter.

The testing of charter and private school facilities must occur at least once every two years and must be performed before the beginning of the school year, except for school facilities operated on a year-round calendar, which must be tested not later than July 1 of the year in which the test is performed. The initial test of charter and private school facilities must occur prior to the beginning of the 2003-2004 school year or by August 31, 2003, whichever is earlier.

The firm or individual conducting the test must immediately report any hazardous natural gas leak to the board of trustees of the school district and the natural gas supplier; for a public school facility, and to the person responsible for such school facility and the natural gas supplier for a charter or private school facility. The school pipe testing must be recorded on Railroad Commission Form PS-86.

New §8.230(d) requires natural gas suppliers to maintain for at least two years a listing of the school facilities to which it sells and delivers natural gas as well as copies of the written notification regarding testing, Form PS-86, and hazardous leaks received pursuant to Texas Utilities Code, §§121.5005- 121.507, and the rule.

The amendment to §8.235, Natural Gas Pipelines Public Education and Liaison, substitutes "Safety Division" for "Gas Services Division, Pipeline Safety Section," in subsection (e).

New §8.245, Penalty Guidelines for Pipeline Safety Violations, is derived from §§7.70(j), but is expanded to include the requirements enacted by Senate Bill 310 (Acts 2001, 77th Leg., ch. 1233, §§ 5 and 71, respectively, eff. Sept. 1, 2001) in Texas Natural Resources Code, §81.0531, and Texas Utilities Code, §121.206, both of which require the Commission, by rule, to adopt guidelines to be used in determining the amount of the penalty for violations of pipeline safety rules.

Specifically, Texas Natural Resources Code, §81.0531(d) provides that the rule must set forth the guidelines to be used in determining the amount of the penalty for a violation of a provision of Title 3 of the Texas Natural Resources Code or a rule, order, or permit that relates to pipeline safety. The guidelines must also include a penalty calculation worksheet that specifies the typical penalty for certain violations, circumstances justifying enhancement of a penalty and the amount of the enhancement, and circumstances justifying a reduction in a penalty and the amount of the reduction. The guidelines must take into account the permittee's history of previous violations, including the number of previous violations; the seriousness of the violation and of any pollution resulting from the violation; any hazard to the health or safety of the public; the degree of culpability; the demonstrated good faith of the person charged; and any other factor the commission considers relevant.

Texas Utilities Code, §121.206, authorizes the Commission to assess an administrative penalty against a person who violates Texas Utilities Code, §121.201, or Subchapter I (Texas Utilities Code, §§121.451-121.454) or a safety standard or rule relating to the transportation of gas and gas pipeline facilities adopted under those provisions. Subsection 121.206(d) requires that the Commission's rule must include a penalty calculation worksheet that specifies the typical penalty for certain violations, circumstances justifying enhancement of a penalty and the amount of the enhancement, and circumstances justifying a reduction in a penalty and the amount of the reduction. The guidelines must take into account the permittee's history of previous violations, including the number of previous violations; the seriousness of the violation and of any pollution resulting from the violation; any hazard to the health or safety of the public; the degree of culpability; the demonstrated good faith of the person charged; and any other factor the commission considers relevant. The rule summarizes and explains the Commission's practice with respect to requesting, recommending, or finally assessing penalties in an enforcement action.

New §8.245(a) provides that the section offers only guidelines, in compliance with the requirements of Texas Natural Resources Code, §81.0531(d), and Texas Utilities Code, §121.206(d). The penalty amounts contained in the tables in this section are provided solely as guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of provisions of Title 3 of the Texas Natural Resources Code relating to pipeline safety, or of rules, orders or permits relating to pipeline safety adopted under those provisions, and for violations of Texas Utilities Code, §121.201 or Subchapter I (§§121.451-121.454), or a safety standard or rule relating to the transportation of gas and gas pipeline facilities adopted under those provisions.

New §8.245(b) states that the establishment of these penalty guidelines in no way limits the Commission's authority and discretion to assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in any case.

New §8.245(c) lists the factors to be considered in determining the amount of any penalty requested, recommended, or finally assessed in an enforcement action. The amount will be determined on an individual case-by-case basis for each violation, taking into consideration the person's history of previous violations, including the number of previous violations; the seriousness of the violation and of any pollution resulting from the violation; any hazard to the health or safety of the public; the degree of culpability; the demonstrated good faith of the person charged; and any other factor the Commission considers relevant.

New §8.245(d) sets forth typical penalties for violations of provisions of Title 3 of the Texas Natural Resources Code relating to pipeline safety, or of rules, orders, or permits relating to pipeline safety adopted under those provisions, and for violations of Texas Utilities Code, §121.201 or Subchapter I (§§121.451-121.454), or a safety standard or rule relating to the transportation of gas and gas pipeline facilities adopted under those provisions in Table 1.

New §8.245(e) explains that for violations that involve threatened or actual pollution; result in threatened or actual safety hazards; or result from the reckless or intentional conduct of the person charged, the Commission may assess an enhancement of the typical penalty, as shown in Table 2. The enhancement may be in any amount in the range shown for each type of violation. Based on comments, the Commission removed the reference to "or involve a person with a history of prior violations" because that element is an enhancement to the basic penalty amount and is covered in subsection (f) and Tables 3 and 4.

New §8.245(f) provides that for violations in which the person charged has a history of prior violations within seven years of the current enforcement action, the Commission may assess an enhancement based on either the number of prior violations or the total amount of previous administrative penalties, but not both. The actual amount of any penalty enhancement will be determined on an individual case-by-case basis for each violation. The guidelines in Tables 3 and 4 are intended to be used separately. Either guideline may be used where applicable, but not both. Based on comments, the titles to Tables 3 and 4 were amended to clarify that the prior violations are within seven years.

New §8.245(g) provides that the recommended penalty for a violation may be reduced by up to 50% if the person charged agrees to a settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing is convened, the opportunity for the person charged to reduce the basic penalty is no longer available. The reduction applies to the basic penalty amount requested and not to any requested enhancements.

New §8.245(h) provides that, in determining the total amount of any penalty requested, recommended, or finally assessed in an enforcement action, the Commission may consider, on an individual case-by-case basis for each violation, the demonstrated

good faith of the person charged. Demonstrated good faith includes, but is not limited to, actions taken by the person charged before the filing of an enforcement action to remedy, in whole or in part, a violation of the pipeline safety rules or to mitigate the consequences of a violation of the pipeline safety rules.

New §8.245(i) explains the penalty calculation worksheet in Table 5. The worksheet lists the typical penalty amounts for certain violations; lists each of the circumstances justifying enhancements of a penalty and the amount of the enhancement; and lists each of the circumstances justifying a reduction in a penalty and the amount of the reduction. Based on comments, references to prior penalties in Table 5 were corrected to seven years.

*Subchapter D. Requirements for Hazardous Liquids and Carbon Dioxide Pipelines Only.*

New rules in Subchapter D, Requirements for Hazardous Liquids and Carbon Dioxide Pipelines Only, include new §8.301, Required Records and Reporting; and new §8.305, Corrosion Control Requirements; current rules in Subchapter D are §8.310, Community Liaison and Public Education for Hazardous Liquids and Carbon Dioxide Pipelines, and §8.315, Hazardous Liquids and Carbon Dioxide Pipelines or Pipeline Facilities Located Within 1,000 Feet of a Public School Building or Facility. Sections 8.301 and 8.305 are adopted without changes to the proposal.

New §8.301, Required Records and Reporting, derives from current §7.84(a), (b), (c) and (e). The Commission has modified the current rule's organization and wording to achieve specificity and clarity, but the substance of the provisions is unchanged from current requirements.

New §8.301(a) covers accident reports. In the event of any failure or accident involving an intrastate pipeline facility from which any hazardous liquid or carbon dioxide is released, if the failure or accident is required to be reported by 49 CFR Part 195, then the operator is required to report to the Commission. In the event of an accident involving crude oil, the operator must notify the Division, which in turn must notify the Commission's appropriate Oil and Gas district office, by telephone to the Commission's emergency line at the earliest practicable moment following discovery of the incident (within two hours). The initial telephone report must include the company/operator name; the location of leak or incident; the time and date of accident/incident; any fatalities and/or personal injuries; phone number of operator; and other significant facts relevant to the accident or incident.

Within 30 days of discovery of the incident, the operator must submit a completed Form H-8 to the Oil and Gas Division of the Commission. In situations specified in the 49 CFR Part 195, the operator must also file duplicate copies of the required Department of Transportation form with the Division.

For incidents involving hazardous liquids, other than crude oil, and carbon dioxide, the operator must notify the Division by telephone at the earliest practicable moment following discovery (within two hours) and within 30 days of discovery of the incident, file in duplicate with the Division a written report using the appropriate Department of Transportation form (as required by 49 CFR Part 195) or a facsimile.

New §8.301(b) pertains to annual reports. Each operator is required to file with the Commission an annual report on Form PS- 45 listing line sizes and lengths, hazardous liquids or carbon dioxide being transported, and accident/failure data. The report is to be filed with the Commission on or before March 15 of a year for the preceding calendar year reported.

New §8.301(c) covers the requirement that operators file facility response plans. Simultaneously with filing either an initial or a revised facility response plan with the United States Department of Transportation, each operator is required to submit to the Division a copy of the initial or revised facility response plan prepared under the Oil Pollution Act of 1990, for all or any part of a hazardous liquid pipeline facility located landward of the coast.

New §8.305, Corrosion Control Requirements, derives from current §7.86. The Commission has modified the current rule's organization and wording to achieve specificity and clarity, but the substance of the provisions is unchanged from current requirements.

Operators are required to comply or ensure compliance with the specified requirements for the installation and construction of new pipeline metallic systems, the relocation or replacement of existing facilities, and the operation and maintenance of steel pipelines.

New §8.305(1) sets forth the requirements for atmospheric corrosion control. Each aboveground pipeline or portion of pipeline exposed to the atmosphere must be cleaned and coated or jacketed with material suitable for the prevention of atmospheric corrosion. For onshore pipelines, the intervals between inspections must not exceed five years; for offshore pipelines, reevaluations are required at least once each calendar year, with intervals not to exceed 15 months.

New §8.305(2) deals with pipeline coatings. All coated pipe used for the transport of hazardous liquids or carbon dioxide must be electrically inspected prior to placement using coating deficiency (holiday) detectors to check for any faults not observable by visual examination. The holiday detector must be operated in accordance with manufacturer's instructions and at a voltage level appropriate for the electrical characteristics of the pipeline system being tested.

New §8.305(3) requires that joint fittings, and tie-ins be coated with materials compatible with the coatings on the pipe.

New §8.305(4) pertains to cathodic protection test stations. Each cathodically protected pipeline must have test stations or other electrical measurement contact points sufficient to determine the adequacy of cathodic protection. These locations must include but are not limited to pipe casing installations and all foreign metallic cathodically protected structures. Test stations (electrode locations) used when taking pipe-to-soil readings for determining cathodic protection must be selected to give representative pipe-to-soil readings. Readings taken at test stations (electrode locations) over or near one or more anodes are not, by themselves, considered representative.

In addition, all test lead wire attachments and bared test lead wires must be coated with an electrically insulating material. Where the pipe is coated, the insulation of the test lead wire material must be compatible with the pipe coating and wire insulation. Cathodic protection systems must meet or exceed the minimum criteria set forth in Criteria For Cathodic Protection of the most current edition of the National Association of Corrosion Engineers (NACE) Standard RP-01-69.

New §8.305(5) concerns monitoring and inspection. Each cathodic protection rectifier or impressed current power source must be inspected at least six times each calendar year, with intervals not to exceed 2 1/2 months, to ensure that it is

operating properly. Each reverse-current switch, diode, and interference bond whose failure would jeopardize structure protection must be checked electrically for proper performance six times each calendar year, with intervals not to exceed 2 1/2 months. Each remaining interference bond must be checked at least once each calendar year, with intervals not to exceed 15 months. Each operator is required to utilize right-of-way inspections to determine areas where interfering currents are suspected. In the course of these inspections, personnel must be alert for electrical or physical conditions which could indicate interference from a neighboring source. Whenever suspected areas are identified, the operator must conduct appropriate electrical tests within six months to determine the extent of interference and take appropriate action.

New §8.305(6) requires that each operator take prompt remedial action to correct any deficiencies observed during monitoring.

## SUBCHAPTER A. GENERAL REQUIREMENTS AND DEFINITIONS

**16 TAC §8.1, §8.5**

The Commission adopts the new sections and amendments under Texas Natural Resources Code, §§81.051 and 81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission as set forth in §81.051, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §§117.001-117.101, which authorize the Commission to adopt safety standards and practices applicable to the transportation of hazardous liquids and carbon dioxide and associated pipeline facilities within Texas to the maximum degrees permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §60101, *et seq*.; Texas Utilities Code, §§121.201-121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §60101, *et seq*.; Texas Utilities Code, §§121.251-121.253, which governs the use of malodorants in natural and liquefied natural gas and authorizes the Commission to make rules as necessary to carry out the purposes of this section; and Texas Utilities Code, §§121.5005-121.507, which govern the testing of natural gas piping systems in school facilities and require the Commission to enforce the provisions of the statute.

Texas Natural Resources Code, §§81.051, 81.052, and 117.001-117.101; Texas Utilities Code, §§121.201-121.210, §§121.251-121.253, and §§121.5005-121.507; and 49 United States Code Annotated, §60101, *et seq*., are affected by the proposed new sections and amendments.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, and 117.001-117.101; Texas Utilities Code, §§121.201-121.210, §§121.251-121.253, and §§121.5005- 121.507; and 49 United States Code Annotated, §60101, *et seq*.

Cross-reference to statute: Texas Natural Resources Code, Chapters 81 and 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

Issued in Austin, Texas, on November 4, 2004.

*§8.1. General Applicability and Standards.*

(a) Applicability.

(1) The rules in this chapter establish minimum standards of accepted good practice and apply to:

(A) all gas pipeline facilities and facilities used in the intrastate transportation of natural gas, including master metered systems, as provided in 49 United States Code (U.S.C.) §60101, *et seq*., and Texas Utilities Code, §§121.001-121.507;

(B) the intrastate pipeline transportation of hazardous liquids or carbon dioxide and all intrastate pipeline facilities as provided in 49 U.S.C. §60101, *et seq*., and Texas Natural Resources Code, §§117.011 and 117.012; and

(C) all pipeline facilities originating in Texas waters (three marine leagues and all bay areas). These pipeline facilities include those production and flow lines originating at the well.

(2) The regulations do not apply to those facilities and transportation services subject to federal jurisdiction under: 15 U.S.C. §717, *et seq.*, or 49 U.S.C. §60101, *et seq.*

(b) Minimum safety standards. The Commission adopts by reference the following provisions, as modified in this chapter, effective April 9, 2004.

(1) Natural gas pipelines shall be designed, constructed, maintained, and operated in accordance with 49 U.S.C. §60101, *et seq.*; 49 Code of Federal Regulations (CFR) Part 191, Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports; 49 CFR Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; and 49 CFR Part 193, Liquefied Natural Gas Facilities: Federal Safety Standards.

(2) Hazardous liquids or carbon dioxide pipelines shall comply with 49 U.S.C. §60101, *et seq.*; and 49 CFR Part 195, Transportation of Hazardous Liquids by Pipeline.

(3) All operators of pipelines and/or pipeline facilities shall comply with 49 CFR Part 199, Drug and Alcohol Testing.

(c) Special situations. Nothing in this chapter shall prevent the Commission, after notice and hearing, from prescribing more stringent standards in particular situations. In special circumstances, the Commission may require the following:

(1) Any operator which cannot determine to its satisfaction the standards applicable to special circumstances may request in writing the Commission's advice and recommendations. In a special case, and for good cause shown, the Commission may authorize exemption, modification, or temporary suspension of any of the provisions of this chapter, pursuant to the provisions of §8.125 of this title (relating to Waiver Procedure).

(2) If an operator transports gas and/or operates pipeline facilities which are in part subject to the jurisdiction of the Commission and in part subject to the Department of Transportation pursuant to 49 U.S.C. §60101, *et seq.* the operator may request in writing to the Commission that all of its pipeline facilities and transportation be subject to the exclusive jurisdiction of the Department of Transportation. If

the operator files a written statement under oath that it will fully comply with the federal safety rules and regulations, the Commission may grant an exemption from compliance with this chapter.

(d) Concurrent filing. A person filing any document or information with the Department of Transportation pursuant to the requirements of 49 CFR Parts 190, 191, 192, 193, 195, or 199 shall file a copy of that document or information with the Safety Division.

(e) Penalties. A person who submits incorrect or false information with the intent of misleading the Commission regarding any material aspect of an application or other information required to be filed at the Commission may be penalized as set out in Texas Natural Resources Code, §§117.051-117.054, and/or Texas Utilities Code, §§121.206-121.210, and the Commission may dismiss with prejudice to refiling an application containing incorrect or false information or reject any other filing containing incorrect or false information.

(f) Retroactivity. Nothing in this chapter shall be applied retroactively to any existing intrastate pipeline facilities concerning design, fabrication, installation, or established operating pressure, except as required by the Office of Pipeline Safety, Department of Transportation. All intrastate pipeline facilities shall be subject to the other safety requirements of this chapter.

*§8.5. Definitions.*

In addition to the definitions given in 49 CFR Parts 191, 192, 193, 195, and 199, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Affected person--This definition of this term applies only to the procedures and requirements of §8.125 of this title (relating to Waiver Procedure). The term includes but is not limited to:

(A) persons owning or occupying real property within 500 feet of any property line of the site for the facility or operation for which the waiver is sought;

(B) the city council, as represented by the city attorney, the city secretary, the city manager, or the mayor, if the property that is the site of the facility or operation for which the waiver is sought is located wholly or partly within any incorporated municipal boundaries, including the extraterritorial jurisdiction of any incorporated municipality. If the site of the facility or operation for which the waiver is sought is located within more than one incorporated municipality, then the city council of every incorporated municipality within which the site is located is an affected person;

(C) the county commission, as represented by the county clerk, if the property that is the site of the facility or operation for which the waiver is sought is located wholly or partly outside the boundary of any incorporated municipality. If the site of the facility or operation for which the waiver is sought is located within more than one county, then the county commission of every county within which the site is located is an affected person;

(D) any other person who would be impacted by the waiver sought.

(2) Applicant--A person who has filed with the Safety Division a complete application for a waiver to a pipeline safety rule or regulation, or a request to use direct assessment or other technology or assessment methodology not specifically listed in §8.101(b)(1), of this title (relating to Pipeline Integrity Assessment and Management Plans for Natural Gas and Hazardous Liquids Pipelines).

(3) Application for waiver--The written request, including all reasons and all appropriate documentation, for the waiver of a particular rule or regulation with respect to a specific facility or operation.

(4) Charter school--An elementary or secondary school operated by an entity created pursuant to Texas Education Code, Chapter 12.

(5) Commission--The Railroad Commission of Texas.

(6) Direct assessment--A structured process that identifies locations where a pipeline may be physically examined to provide assessment of pipeline integrity. The process includes collection, analysis, assessment, and integration of data, including but not limited to the items listed in §8.101(b)(1) of this title, relating to Pipeline Integrity Assessment and Management Plans for Natural Gas and Hazardous Liquids Pipelines. The physical examination may include coating examination and other applicable non-destructive evaluation.

(7) Director--The director of the Safety Division or the director's delegate.

(8) Division--The Safety Division of the Commission.

(9) Farm tap odorizer--A wick-type odorizer serving a consumer or consumers off any pipeline other than that classified as distribution as defined in 49 CFR 192.3 which uses not more than 10 mcf on an average day in any month.

(10) Gas--Natural gas, flammable gas, or other gas which is toxic or corrosive.

(11) Gas company--Any person who owns or operates pipeline facilities used for the transportation or distribution of gas, including master metered systems.

(12) Hazardous liquid--Petroleum, petroleum products, anhydrous ammonia, or any substance or material which is in liquid state, excluding liquefied natural gas (LNG), when transported by pipeline facilities and which has been determined by the United States Secretary of Transportation to pose an unreasonable risk to life or property when transported by pipeline facilities.

(13) In-line inspection--An internal inspection by a tool capable of detecting anomalies in pipeline walls such as corrosion, metal loss, or deformation.

(14) Intrastate pipeline facilities--Pipeline facilities located within the State of Texas which are not used for the transportation of natural gas or hazardous liquids or carbon dioxide in interstate or foreign commerce.

(15) Lease user--A consumer who receives free gas in a contractual agreement with a pipeline operator or producer.

(16) Liquids company--Any person who owns or operates a pipeline or pipelines and/or pipeline facilities used for the transportation or distribution of any hazardous liquid, or carbon dioxide, or anhydrous ammonia.

(17) Master meter operator--The owner, operator, or manager of a master metered system.

(18) Master metered system--A pipeline system (other than one designated as a local distribution system) for distributing gas within but not limited to a definable area, such as a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter or by other means such as rents.

(19) Natural gas supplier--The entity selling and delivering the natural gas to a school facility or a master metered system. If more

than one entity sells and delivers natural gas to a school facility or master metered system, each entity is a natural gas supplier for purposes of this chapter.

(20) Operator--A person who operates on his or her own behalf, or as an agent designated by the owner, intrastate pipeline facilities.

(21) Person--Any individual, firm, joint venture, partnership, corporation, association, cooperative association, joint stock association, trust, or any other business entity, including any trustee, receiver, assignee, or personal representative thereof, a state agency or institution, a county, a municipality, or school district or any other governmental subdivision of this state.

(22) Person responsible for a school facility--In the case of a public school, the superintendent of the school district as defined in Texas Education Code, §11.201, or the superintendent's designee previously specified in writing to the natural gas supplier. In the case of charter and private schools, the principal of the school or the principal's designee previously specified in writing to the natural gas supplier.

(23) Pipeline facilities--New and existing pipe, right-of-way, and any equipment, facility, or building used or intended for use in the transportation of gas or hazardous liquid or their treatment during the course of transportation.

(24) Pressure test--Those techniques and methodologies prescribed for leak-test and strength-test requirements for pipelines. For natural gas pipelines, the requirements are found in 49 Code of Federal Regulations (CFR) Part 192, and specifically include 49 CFR 192.505, 192.507, 192.515, and 192.517. For hazardous liquids pipelines, the requirements are found in 49 CFR Part 195, and specifically include 49 CFR 195.305, 195.306, 195.308, and 195.310.

(25) Private school--An elementary or secondary school operated by an entity accredited by the Texas Private School Accreditation Commission.

(26) Public school--An elementary or secondary school operated by an entity created in accordance with the laws of the State of Texas and accredited by the Texas Education Agency pursuant to Texas Education Code, Chapter 39, Subchapter D. The term does not include programs and facilities under the jurisdiction of the Texas Department of Mental Health and Mental Retardation, the Texas Youth Commission, the Texas Department of Human Services, the Texas Department of Criminal Justice or any probation agency, the Texas School for the Blind and Visually Impaired, the Texas School for the Deaf and Regional Day Schools for the Deaf, the Texas Academy of Mathematics & Science, the Texas Academy of Leadership in the Humanities, and home schools or proprietary schools as defined in Texas Education Code, §132.001.

(27) School facility--All piping, buildings and structures operated by a public, charter, or private school that are downstream of a meter measuring natural gas service in which students receive instruction or participate in school sponsored extracurricular activities, excluding maintenance or bus facilities, administrative offices, and similar facilities not regularly utilized by students.

(28) Transportation of gas--The gathering, transmission, or distribution of gas by pipeline or its storage within the State of Texas. For purposes of safety regulation, the term shall not include the gathering of gas in those rural locations which lie outside the limits of any incorporated or unincorporated city, town, village, or any other designated residential or commercial area such as a subdivision, a business or shopping center, a community development, or any similar populated area which the Secretary of Transportation may define as a nonrural area.

(29) Transportation of hazardous liquids or carbon dioxide--The movement of hazardous liquids or carbon dioxide by pipeline, or their storage incidental to movement, except that, for purposes of safety regulations, it does not include any such movement through gathering lines in rural locations or production, refining, or manufacturing facilities or storage or in-plant piping systems associated with any of those facilities.

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

Filed with the Office of the Secretary of State on November 4, 2004.

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Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

## SUBCHAPTER B. REQUIREMENTS FOR ALL PIPELINES

### 16 TAC §§8.51, 8.101, 8.105, 8.115, 8.125, 8.130

The Commission adopts the new sections and amendments under Texas Natural Resources Code, §§81.051 and 81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission as set forth in §81.051, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §§117.001-117.101, which authorize the Commission to adopt safety standards and practices applicable to the transportation of hazardous liquids and carbon dioxide and associated pipeline facilities within Texas to the maximum degrees permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §60101, *et seq*.; Texas Utilities Code, §§121.201-121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §60101, *et seq*.; Texas Utilities Code, §§121.251-121.253, which governs the use of malodorants in natural and liquefied natural gas and authorizes the Commission to make rules as necessary to carry out the purposes of this section; and Texas Utilities Code, §§121.5005-121.507, which govern the testing of natural gas piping systems in school facilities and require the Commission to enforce the provisions of the statute.

Texas Natural Resources Code, §§81.051, 81.052, and 117.001-117.101; Texas Utilities Code, §§121.201-121.210, §§121.251-121.253, and §§121.5005-121.507; and 49 United States Code Annotated, §60101, *et seq*., are affected by the proposed new sections and amendments.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, and 117.001-117.101; Texas Utilities Code, §§121.201-121.210, §§121.251-121.253, and §§121.5005- 121.507; and 49 United States Code Annotated, §60101, *et seq*.

Cross-reference to statute: Texas Natural Resources Code, Chapters 81 and 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

Issued in Austin, Texas, on November 4, 2004.

*§8.51. Organization Report.*

(a) Each gas and/or liquids company, other than a master meter operator, operating wholly or partially within this state, acting either as principal or as agent for another, and performing operations within the jurisdiction of the Commission, shall have on file with the Commission an approved organization report (Form P-5) and financial security as required by Texas Natural Resources Code, §§91.103-91.1091, and §3.1 of this title (relating to Organization Report; Retention of Records; Notice Requirements).

(b) Each master meter operator, operating wholly or partially within this state, acting either as principal or as agent for another, and performing operations within the jurisdiction of the Commission, shall have on file with the Commission an approved organization report (Form P-5) as authorized by Texas Utilities Code §121.201(a)(2), but is not required to furnish the financial security required by Texas Natural Resources Code, §91.109(b)(2) if the operation of one or more master metered systems is the only business for which the financial security would otherwise be required.

*§8.101. Pipeline Integrity Assessment and Management Plans for Natural Gas and Hazardous Liquids Pipelines.*

(a) This section does not apply to plastic pipelines.

(b) By February 1, 2002, operators of intrastate transmission and gathering lines subject to the requirements of 49 CFR Part 192 or 49 CFR Part 195 shall have designated to the Commission on a system-by-system or segment within each system basis whether the pipeline operator has chosen to use the risk-based analysis pursuant to paragraph (1) of this subsection or the prescriptive plan authorized by paragraph (2) of this subsection. Hazardous liquid pipeline operators using the risk-based plan shall complete at least 50% of the initial assessments by January 1, 2006, and the remainder by January 1, 2011; operators using the prescriptive plan shall complete the initial integrity testing by January 1, 2006, or January 1, 2011, pursuant to the requirements of paragraph (2) of this subsection. Natural gas pipeline operators using the risk-based plan shall complete at least 50% of the initial assessments by December 17, 2007, and the remainder by December 17, 2012; operators using the prescriptive plan shall complete the initial integrity testing by December 17, 2007, or December 17, 2012, pursuant to the requirements of paragraph (2) of this subsection.

(1) The risk-based plan shall contain at a minimum:

(A) identification of the pipelines and pipeline segments or sections in each system covered by the plan;

(B) a priority ranking for performing the integrity assessment of pipeline segments of each system based on an analysis of risks that takes into account:

*(i)* population density;

*(ii)* immediate response area designation, which, at a minimum, means the identification of significant threats to the environment (including but not limited to air, land, and water) or to the public health or safety of the immediate response area;

*(iii)* pipeline configuration;

*(iv)* prior in-line inspection data or reports;

*(v)* prior pressure test data or reports;

*(vi)* leak and incident data or reports;

*(vii)* operating characteristics such as established maximum allowable operating pressures (MAOP) for gas pipelines or maximum operating pressures (MOP) for liquids pipelines, leak survey results, cathodic protection surveys, and product carried;

*(viii)* construction records, including at a minimum but not limited to the age of the pipe and the operating history;

*(ix)* pipeline specifications; and

*(x)* any other data that may assist in the assessment of the integrity of pipeline segments.

(C) assessment of pipeline integrity using at least one of the following methods appropriate for each segment:

*(i)* in-line inspection;

*(ii)* pressure test;

*(iii)* direct assessment after approval by the Commission, or

*(iv)* other technology or assessment methodology not specifically listed in this paragraph after approval by the Commission.

(D) management methods for the pipeline segments which may include remedial action or increased inspections as necessary; and

(E) periodic review of the pipeline integrity assessment and management plan every 36 months, or more frequently if necessary.

(2) Operators electing not to use the risk-based plan in paragraph (1) of this subsection shall conduct a pressure test or an in-line inspection and take remedial action in accordance with the following schedule:
Figure 1: 16 TAC §8.101(b)(2) (No change.)
Figure 2: 16 TAC §8.101(b)(2) (No change.)

(c) Within 185 days after receipt of notice that an operator's plan is complete, the Commission shall either notify the operator of the acceptance of the plan or shall complete an evaluation of the plan to determine compliance with this section.

(d) After the completion of the assessment required under either plan, the operator shall promptly remove defects that are immediate hazards and, no later than the next test interval, shall mitigate any anomalies identified by the test that could reasonably be predicted to become hazardous defects.

(e) Operators of pipelines for which an integrity assessment was performed prior to the effective date of this proposed new rule shall not be required to implement a new plan as long as the original assessment meets the minimum requirements of this section.

(f) If a pipeline that is not subject to this section undergoes any change in circumstances that results in the pipeline becoming subject to this section, then the operator of such pipeline shall establish integrity of the pipeline pursuant to the requirements of this section prior to any further operation. Such changes include but are not limited to an addition to the pipeline, change in the operating pressure of the pipeline, change from inactive to active status, change in population in the area of the pipeline, or change of operator of the pipeline segment. If a pipeline segment is acquired by a new operator, the pipeline segment can continue to be operated without establishing pipeline integrity

as long as the new operator utilizes the prior operator's operation and maintenance procedures for this pipeline segment. If the population in the area of a pipeline segment changes, the pipeline segment can continue to operate without establishing pipeline integrity until such time as the operator determines whether or not the change in population affects the criteria applicable to the integrity management program, but for no longer than the time frames established under 49 CFR Part 192 or 195.

*§8.105. Records.*

Each pipeline operator shall maintain the following most current record or records for at least the time period prescribed by the following regulations or five years if no other time period is specified:

(1) For gas and LNG pipelines, those records and documents required by 49 CFR Parts 191, 192, 193, and 199, and §8.215 of this chapter (relating to Odorization of Gas).

(2) For liquids pipelines, those records and documents required by 49 CFR Parts 195 and 199.

(3) Activities for which the above listed regulations may require record-keeping include but are not limited to:

(A) all design and installation of new and used pipe, including design pressure calculations, pipeline specifications, specified minimum yield strength and wall-thickness calculations, each valve, fitting, fabricated branch connection, closure, flange connection, station piping, fabricated assembly, and above-ground breakout tank;

(B) all pipeline construction, procedures, training, and inspection pertaining to welding, nondestructive testing, and cathodic protection;

(C) all hydrostatic testing performed on all pipeline segments, components, and tie-ins; and

(D) the performance of the procedures outlined in the operations and maintenance procedure manual.

*§8.115. New Construction Commencement Report.*

Except as set forth below, at least 30 days prior to commencement of construction of any installation totaling one mile or more of pipe, each operator shall file with the Commission a report stating the proposed originating and terminating points for the pipeline, counties to be traversed, size and type of pipe to be used, type of service, design pressure, and length of the proposed line. New construction on natural gas distribution or master meter systems of less than five miles is excepted from this reporting requirement.

*§8.125. Waiver Procedure.*

(a) Purpose and scope. The Commission considers waiver applications to be properly based on a technical inability to comply with the pipeline safety standards set forth in this chapter, related to the specific configuration, location, operating limitations, or available technology for a particular pipeline. Generally, an application for waiver of a pipeline safety rule is site-specific. Cost is generally not a proper objection to compliance by the operator with the pipeline safety standards set forth in this chapter, and a waiver filed simply to avoid the expense of safety compliance is generally not appropriate.

(b) Filing. Any person may apply for a waiver of a pipeline safety rule or regulation by filing an application for waiver with the Division. Upon the filing of an application for waiver of a pipeline safety rule, the Division shall assign a docket number to the application and shall forward it to the director, and thereafter all documents relating to that application shall include the assigned docket number. An application for a waiver is not an acceptable response to a notice of an alleged violation of a pipeline safety rule. The Division shall not assign a docket number to or consider any application filed in response to a notice of violation of a pipeline safety rule.

(c) Form. The application shall be typewritten on paper not to exceed 8 1/2 inches by 11 inches and shall have margins of at least one inch. The contents of the application shall appear on one side of the paper and shall be double or one and one-half spaced, except that footnotes and lengthy quotations may be single spaced. Exhibits attached to an application shall be the same size as the application or folded to that size.

(d) Content. The application shall contain the following:

(1) the name, business address, and telephone number, and facsimile transmission number and electronic mail address, if available, of the applicant and of the applicant's authorized representative, if any;

(2) a description of the particular operation for which the waiver is sought;

(3) a statement concerning the regulation from which the waiver is sought and the reason for the exception;

(4) a description of the facility at which the operation is conducted, including, if necessary, design and operation specifications, monitoring and control devices, maps, calculations, and test results;

(5) a description of the acreage and/or address upon which the facility and/or operation that is the subject of the waiver request is located. The description shall:

(A) include a plat drawing;

(B) identify the site sufficiently to permit determination of property boundaries;

(C) identify environmental surroundings;

(D) identify placement of buildings and areas intended for human occupancy that could be endangered by a failure or malfunction of the facility or operation;

(E) state the ownership of the real property of the site; and

(F) state under what legal authority the applicant, if not the owner of the real property, is permitted occupancy;

(6) an identification of any increased risks the particular operation would create if the waiver were granted, and the additional safety measures that are proposed to compensate for those risks;

(7) a statement of the reason the particular operation, if the waiver were granted, would not be inconsistent with pipeline safety.

(8) an original signature, in ink, by the applicant or the applicant's authorized representative, if any; and

(9) a list of the names, addresses, and telephone numbers of all affected persons, as defined in §8.5 of this title (relating to Definitions).

(e) Notice.

(1) The applicant shall send a copy of the application and a notice of protest form published by the Commission by certified mail, return receipt requested, to all affected persons on the same date of filing the application with the Division. The notice shall describe the nature of the waiver sought; shall state that affected persons have 30 calendar days from the date of the last publication to file written objections or requests for a hearing with the Division; and shall include

the docket number of the application and the mailing address of the Division. The applicant shall file all return receipts with the Division as proof of notice.

(2) The applicant shall publish notice of its application for waiver of a pipeline safety rule once a week for two consecutive weeks in the state or local news section of a newspaper of general circulation in the county or counties in which the facility or operation for which the requested waiver is located. The notice shall describe the nature of the waiver sought; shall state that affected persons have 30 calendar days from the date of the last publication to file written objections or requests for a hearing with the Division; and shall include the docket number of the application and the mailing address of the Division. Within ten calendar days of the date of last publication, the applicant shall file with the Division a publisher's affidavit from each newspaper in which notice was published as proof of publication of notice. The affidavit shall state the dates on which the notice was published and shall have attached to it the tear sheets from each edition of the newspaper in which the notice was published.

(3) The applicant shall give any other notice of the application which the director may require.

(f) Protest or support of waiver application.

(1) Affected persons shall have standing to object to, support, or request a hearing on an application.

(2) A person who objects to, who supports, or who requests a hearing on the application shall file a written objection, statement of support, or request for a hearing with the Division no later than the 30th calendar day after the date the notice of the application was postmarked or the last date the notice was published in the newspaper in the county in which the person owns or occupies property, whichever is later.

(3) The objection, statement of support, or request for a hearing shall:

(A) state the name, address, and telephone number of the person filing the objection, statement of support, or request for hearing and of every person on whose behalf the objection, statement of support, or request for a hearing is being filed;

(B) include a statement of the facts on which the person filing the protest or statement of support relies to conclude that each person on whose behalf the objection, statement of support, or request for a hearing is being filed is an affected person, as defined in §8.5 of this title (relating to Definitions); and

(C) include a statement of the nature and basis for the objection to or statement of support for the waiver request.

(g) Division review.

(1) The director shall complete the review of the application within 60 calendar days after the application is complete. If an application remains incomplete 12 months after the date the application was filed, such application shall expire and the director shall dismiss without prejudice to refiling.

(A) If the director does not receive any objections or requests for a hearing from any affected person, the director may recommend in writing that the Commission grant the waiver if granting the waiver is not inconsistent with pipeline safety. The director shall forward the file, along with the written recommendation that the waiver be granted, to the Office of General Counsel for the preparation of an order.

(B) The director shall not recommend that the Commission grant the waiver if the application was filed either to correct an existing violation or to avoid the expense of safety compliance. The director shall dismiss with prejudice to refiling an application filed in response to a notice of violation of a pipeline safety rule.

(C) If the director declines to recommend that the Commission grant the waiver, the director shall notify the applicant in writing of the recommendation and the reason for it, and shall inform the applicant of any specific deficiencies in the application.

(2) If the director declines to recommend that the Commission grant the waiver, and if the application was not filed either to correct an existing violation or solely to avoid the expense of safety compliance, the applicant may either:

(A) modify the application to correct the deficiencies and resubmit the application; or

(B) file a written request for a hearing on the matter within ten calendar days of receiving notice of the assistant director's written decision not to recommend that the Commission grant the application.

(h) Hearings.

(1) Within three days of receiving either a timely-filed objection or a request for a hearing, the director shall forward the file to the Office of General Counsel for the setting of a hearing.

(2) Within three days of receiving the file, the Office of General Counsel shall assign a presiding examiner to conduct a hearing as soon as practicable.

(3) The presiding examiner shall mail notice of the hearing by certified mail, return receipt requested, not less than 30 calendar days prior to the date of the hearing to:

(A) the applicant;

(B) all persons who filed an objection or a request for a hearing; and

(C) all other affected persons.

(4) The presiding examiner shall conduct the hearing in accordance with the procedural requirements of Texas Government Code, Chapter 2001 (the Administrative Procedure Act), and Chapter 1 of this title (relating to Practice and Procedure).

(i) Finding requirement. After a hearing, the Commission may grant a waiver of a pipeline safety rule based on a finding or findings that the grant of the waiver is not inconsistent with pipeline safety.

(j) Notice to United States Department of Transportation. Upon a Commission order granting a waiver of a pipeline safety rule, the director shall give written notice to the Secretary of Transportation pursuant to the provisions of 49 United States Code Annotated, §60118(d). The Commission's grant of a waiver becomes effective in accordance with the provisions of 49 United States Code Annotated, §60118(d).

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 November 4, 2004.

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Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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## SUBCHAPTER C. REQUIREMENTS FOR NATURAL GAS PIPELINES ONLY

### 16 TAC §§8.201, 8.203, 8.205, 8.210, 8.215, 8.220, 8.225, 8.230, 8.235, 8.245

The Commission adopts the new sections and amendments under Texas Natural Resources Code, §§81.051 and 81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission as set forth in §81.051, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §§117.001-117.101, which authorize the Commission to adopt safety standards and practices applicable to the transportation of hazardous liquids and carbon dioxide and associated pipeline facilities within Texas to the maximum degrees permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §60101, *et seq*.; Texas Utilities Code, §§121.201-121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §60101, *et seq*.; Texas Utilities Code, §§121.251-121.253, which governs the use of malodorants in natural and liquefied natural gas and authorizes the Commission to make rules as necessary to carry out the purposes of this section; and Texas Utilities Code, §§121.5005-121.507, which govern the testing of natural gas piping systems in school facilities and require the Commission to enforce the provisions of the statute.

Texas Natural Resources Code, §§81.051, 81.052, and 117.001-117.101; Texas Utilities Code, §§121.201-121.210, §§121.251-121.253, and §§121.5005-121.507; and 49 United States Code Annotated, §60101, *et seq*., are affected by the proposed new sections and amendments.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, and 117.001-117.101; Texas Utilities Code, §§121.201-121.210, §§121.251-121.253, and §§121.5005- 121.507; and 49 United States Code Annotated, §60101, *et seq*.

Cross-reference to statute: Texas Natural Resources Code, Chapters 81 and 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

Issued in Austin, Texas, on November 4, 2004.

*§8.210. Reports.*

(a) Accident, leak, or incident report.

(1) Telephonic report. At the earliest practical moment or within two hours following discovery, a gas company shall notify the Commission by telephone of any event that involves a release of gas from any pipeline which:

(A) caused a death or any personal injury requiring hospitalization;

(B) required taking any segment of a transmission line out of service, except as described in paragraph (2) of this subsection;

(C) resulted in unintentional gas ignition requiring emergency response;

(D) caused estimated damage to the property of the operator, others, or both totaling $5,000 or more, including gas loss; or

(E) could reasonably be judged as significant because of location, rerouting of traffic, evacuation of any building, media interest, etc., even though it does not meet subparagraphs (A), (B), (C), or (D) of this paragraph.

(2) A gas company shall not be required to make a telephonic report for a leak or incident which meets only paragraph (1)(B) of this subsection if that leak or incident occurred solely as a result of or in connection with planned or routine maintenance or construction.

(3) The telephonic report shall be made to the Commission's 24- hour emergency line at (512) 463-6788 and shall include the following:

(A) the operator or gas company's name;

(B) the location of the leak or incident;

(C) the time of the incident or accident;

(D) the fatalities and/or personal injuries;

(E) the phone number of the operator; and

(F) any other significant facts relevant to the accident or incident.

(4) Written report.

(A) Following the initial telephonic report for accidents, leaks, or incidents described in paragraph (1)(A) and (E) of this subsection, the operator who made the telephonic report shall submit to the Commission a written report summarizing the accident or incident. The report shall be submitted as soon as practicable within 30 calendar days after the date of the telephonic report. The written report shall be made in duplicate on forms supplied by the Department of Transportation. The Division shall forward one copy to the Department of Transportation.

(B) The written report is not required to be submitted for master metered systems.

(C) The written report is required for estimated damage to the property of the operator, others, or both totaling $50,000 or more, including gas loss.

(D) The Commission may require an operator to submit a written report for an accident or incident not otherwise required to be reported.

(b) Pipeline safety annual reports.

(1) Except as provided in paragraph (2) of this subsection, each gas company shall submit an annual report for its systems in the same manner as required by 49 CFR Part 191. The report shall be submitted to the Division in duplicate on forms supplied by the Department of Transportation not later than March 15 of a year for the preceding

calendar year. The Division shall forward one copy to the Department of Transportation.

(2) The annual report is not required to be submitted for:

(A) a petroleum gas system, as that term is defined in 49 CFR 192.11, which serves fewer than 100 customers from a single source; or

(B) a master metered system.

(c) Safety related condition reports. Each gas company shall submit to the Division in writing a safety-related condition report for any condition outlined in 49 CFR 191.23.

(d) Offshore pipeline condition report. Within 60 days of completion of underwater inspection, each operator shall file with the Division a report of the condition of all underwater pipelines subject to 49 CFR 192.612(a). The report shall include the information required in 49 CFR 191.27.

*§8.215. Odorization of Gas.*

(a) Odorization of gas.

(1) Each gas company shall continuously odorize gas by the use of a malodorant agent as set forth in this section unless the gas contains a natural malodor or is odorized prior to delivery by a supplier.

(2) Unless required by 49 CFR Part 192.625(B) or by this section, odorization is not required for:

(A) gas in underground or other storage;

(B) gas used or sold primarily for use in natural gasoline extraction plants, recycling plants, chemical plants, carbon black plants, industrial plants, or irrigation pumps; or

(C) gas used in lease and field operation or development or in repressuring wells.

(3) Gas shall be odorized by the user if:

(A) the gas is delivered for use primarily in one of the activities or facilities listed in paragraph (2) of this subsection and is also used in one of those activities for space heating, refrigeration, water heating, cooking, and other domestic uses; or

(B) the gas is used for furnishing heat or air conditioning for office or living quarters.

(4) In the case of lease users, the supplier shall ensure that the gas will be odorized before being used by the consumer.

(b) Odorization equipment. Gas companies shall use odorization equipment approved by the Commission as follows.

(1) Commercial manufacturers of odorization equipment manufactured under accepted rules and practices of the industry shall submit plans and specifications of such equipment to the Division with Form PS-25 for approval of standardized models and designs. The Division shall maintain a list of approved commercially available odorization equipment.

(2) Each operator shall be required to maintain a list of odorization equipment used in its particular operations, including the location of the odorization equipment, the brand name, model number, and the date last serviced. The list shall be available for review during safety evaluations by the Division.

(3) Prior to using shop-made or other odorization equipment not approved by the Commission under paragraph (1) of this subsection, a gas company shall submit to the Division Form PS-25 and plans and specifications for the equipment. Within 30 days of receiving Form PS-25 and related documents, the Division shall notify the gas company in writing whether the equipment is approved or not approved for the requested use.

(c) Malodorants. The Division shall maintain a list of approved malodorants which shall meet the following criteria.

(1) The malodorant when blended with gas in the amount specified for adequate odorization of the gas shall not be deleterious to humans or to the materials present in a gas system and shall not be soluble in water to a greater extent than 2 1/2 parts by weight of malodorant to 100 parts by weight of water.

(2) The products of combustion from the malodorant shall be nontoxic to humans breathing air containing the products of combustion and the products of combustion shall not be corrosive or harmful to the materials to which such products of combustion would ordinarily come in contact.

(3) The malodorant agent to be introduced in the gas, or the natural malodor of the gas, or the combination of the malodorant and the natural malodor of the gas shall have a distinctive malodor so that when gas is present in air at a concentration of as much as 1.0% or less by volume, the malodor is readily detectable by an individual with a normal sense of smell.

(4) The level of natural malodor or the injection rate of approved malodorant shall be sufficient to achieve the requirement of paragraph (3) of this subsection.

(d) Malodorant tests and reports.

(1) Malodorant injection report. Each gas company shall record as frequently as necessary to maintain adequate odorization but not less than once each quarter the following malodorant information for all odorization equipment, except farm tap odorizers. The required information shall be recorded and retained in the company's files:

(A) odorizer location;

(B) brand name and model of odorizer;

(C) name of malodorant, concentrate, or dilute;

(D) quantity of malodorant at beginning of month/quarter;

(E) amount added during month/quarter;

(F) quantity at end of month/quarter;

(G) MMcf of gas odorized during month/quarter; and

(H) injection rate per MMcf.

(2) Each natural gas operator shall check, test, and service farm tap odorizers at least annually according to the terms of the approved schedule of service and maintenance for farm tap odorizers Form PS-9, filed with and approved by the Division. Each gas company shall maintain records to reflect the date of service and maintenance on file for at least two years.

(e) Malodorant concentration tests and reports.

(1) Each gas company shall conduct the following concentration tests on the gas supplied through its facilities and required to be odorized. Other tests conducted in accordance with procedures approved by the Division may be substituted for the following room and malodorant concentration test meter methods. Test points shall be distant from odorizing equipment, so as to be representative of the odorized gas in the system. Tests shall be performed at least once each calendar year or at such other times as the Division may reasonably require. The results of these tests shall be recorded on the approved

odorant concentration test Form PS-6 or equivalent and retained in each company's files for at least two years.

(A) Room test--Test results shall include the following:

*(i)* odorizer name and location;

*(ii)* date test performed, test time, location of test, and distance from odorizer, if applicable;

*(iii)* percent gas in air when malodor is readily detectable; and

*(iv)* signatures of witnesses to the test and the supervisor of the test.

(B) Malodorant concentration test meter--Test results shall include the following:

*(i)* odorizer name and location;

*(ii)* malodorant concentration meter make, model, and serial number;

*(iii)* date test performed, test time, odorizer tested, and distance from odorizer, if applicable;

*(iv)* test results indicating percent gas in air when malodor is readily detectable; and

*(v)* signature of person performing the test.

(2) Farm tap odorizers shall be exempt from the odorization testing requirements of paragraph (1) of this subsection.

(3) Gas companies that obtain gas into which malodorant previously has been injected or gas which is considered to have a natural malodor and therefore do not odorize the gas themselves shall be required to conduct quarterly malodorant concentration tests and retain records for a period of two years.

*§8.225. Plastic Pipe Requirements.*

(a) Plastic pipe failure report. Each operator shall record information relating to each material failure of plastic pipe during each calendar year, and annually shall file with the Division, in conjunction with the annual report required to be filed under §8.210(b) of this chapter (relating to Reports), a summary of the failures on Form PS-80, Annual Plastic Pipe Failure Report. Operators shall have filed initial Forms PS-80, reporting plastic pipe failure data for calendar year 2001, by March 15, 2002.

(b) Plastic pipe installation and/or removal report.

(1) Each operator shall have reported to the Commission on March 15, 2003, and March 15, 2004, the amount in miles of plastic pipe installed and/or removed during the preceding calendar year on Form PS-82, Annual Report of Plastic Installation and/or Removal. The mileage shall have been identified by:

(A) system;

(B) nominal pipe size;

(C) material designation code;

(D) pipe category; and

(E) pipe manufacturer.

(2) For all new installations of plastic pipe, each operator shall record and maintain for the life of the pipeline the following information for each pipeline segment:

(A) all specification information printed on the pipe;

(B) the total length;

(C) a citation to the applicable joining procedures used for the pipe and the fittings; and

(D) the location of the installation to distinguish the end points. A pipeline segment is defined as continuous piping where the pipe specification required by ASTM D2513 or ASTM D2517 does not change.

(c) Plastic pipe inventory report. Beginning March 15, 2005, and annually thereafter, each operator shall report to the Division the amount of plastic pipe in natural gas service as of December 31 of the previous year. The amount of plastic pipe shall be determined by a review of the records of the operator and shall be reported on Form PS-81, Plastic Pipe Inventory. The report shall include the following:

(1) system;

(2) miles of pipe;

(3) calendar year of installation;

(4) nominal pipe size;

(5) material designation code;

(6) pipe category; and

(7) pipe manufacturer.

(d) Electronic format required. Operators of systems with more than 1,000 customers shall file the reports required by this section electronically in a format specified by the Commission.

(e) Report forms; signature required. Operators shall complete all forms required to be filed in accord with this section, including signatures of company officials. The Commission may consider the failure of an operator to complete all forms as required to be a violation under Texas Utilities Code, Chapter 121, and may seek penalties as permitted by that chapter.

*§8.245. Penalty Guidelines for Pipeline Safety Violations.*

(a) Only guidelines. This section complies with the requirements of Texas Natural Resources Code, §81.0531(d), and Texas Utilities Code, §121.206(d). The penalty amounts contained in the tables in this section are provided solely as guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of provisions of Title 3 of the Texas Natural Resources Code relating to pipeline safety, or of rules, orders or permits relating to pipeline safety adopted under those provisions, and for violations of Texas Utilities Code, §121.201 or Subchapter I (§§121.451-121.454), or a safety standard or rule relating to the transportation of gas and gas pipeline facilities adopted under those provisions.

(b) Commission authority. The establishment of these penalty guidelines shall in no way limit the Commission's authority and discretion to assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in any case.

(c) Factors considered. The amount of any penalty requested, recommended, or finally assessed in an enforcement action will be determined on an individual case-by-case basis for each violation, taking into consideration the following factors:

(1) the person's history of previous violations, including the number of previous violations;

(2) the seriousness of the violation and of any pollution resulting from the violation;

(3) any hazard to the health or safety of the public;

(4) the degree of culpability;

(5) the demonstrated good faith of the person charged; and

(6) any other factor the Commission considers relevant.

(d) Typical penalties. Typical penalties for violations of provisions of Title 3 of the Texas Natural Resources Code relating to pipeline safety, or of rules, orders, or permits relating to pipeline safety adopted under those provisions, and for violations of Texas Utilities Code, §121.201 or Subchapter I (§§121.451-121.454), or a safety standard or rule relating to the transportation of gas and gas pipeline facilities adopted under those provisions are set forth in Table 1.
Figure: 16 TAC §8.245(d)

(e) Penalty enhancements for certain violations. For violations that involve threatened or actual pollution; result in threatened or actual safety hazards; or result from the reckless or intentional conduct of the person charged, the Commission may assess an enhancement of the typical penalty, as shown in Table 2. The enhancement may be in any amount in the range shown for each type of violation.
Figure: 16 TAC §8.245(e)

(f) Penalty enhancements for certain violators. For violations in which the person charged has a history of prior violations within seven years of the current enforcement action, the Commission may assess an enhancement based on either the number of prior violations or the total amount of previous administrative penalties, but not both. The actual amount of any penalty enhancement will be determined on an individual case-by- case basis for each violation. The guidelines in Tables 3 and 4 are intended to be used separately. Either guideline may be used where applicable, but not both.
Figure 1: 16 TAC §8.245(f)
Figure 2: 16 TAC §8.245(f)

(g) Penalty reduction for settlement before hearing. The recommended penalty for a violation may be reduced by up to 50% if the person charged agrees to a settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing is convened, the opportunity for the person charged to reduce the basic penalty is no longer available. The reduction applies to the basic penalty amount requested and not to any requested enhancements.

(h) Demonstrated good faith. In determining the total amount of any penalty requested, recommended, or finally assessed in an enforcement action, the Commission may consider, on an individual case-by-case basis for each violation, the demonstrated good faith of the person charged. Demonstrated good faith includes, but is not limited to, actions taken by the person charged before the filing of an enforcement action to remedy, in whole or in part, a violation of the pipeline safety rules or to mitigate the consequences of a violation of the pipeline safety rules.

(i) Penalty calculation worksheet. The penalty calculation worksheet shown in Table 5 lists the typical penalty amounts for certain violations; the circumstances justifying enhancements of a penalty and the amount of the enhancement; and the circumstances justifying a reduction in a penalty and the amount of the reduction.
Figure: 16 TAC §8.245(i)

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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Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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## SUBCHAPTER D. REQUIREMENTS FOR HAZARDOUS LIQUIDS AND CARBON DIOXIDE PIPELINES ONLY

### 16 TAC §8.301, §8.305

The Commission adopts the new sections and amendments under Texas Natural Resources Code, §§81.051 and 81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission as set forth in §81.051, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §§117.001-117.101, which authorize the Commission to adopt safety standards and practices applicable to the transportation of hazardous liquids and carbon dioxide and associated pipeline facilities within Texas to the maximum degrees permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §60101, *et seq*.; Texas Utilities Code, §§121.201-121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §60101, *et seq*.; Texas Utilities Code, §§121.251-121.253, which governs the use of malodorants in natural and liquefied natural gas and authorizes the Commission to make rules as necessary to carry out the purposes of this section; and Texas Utilities Code, §§121.5005-121.507, which govern the testing of natural gas piping systems in school facilities and require the Commission to enforce the provisions of the statute.

Texas Natural Resources Code, §§81.051, 81.052, and 117.001-117.101; Texas Utilities Code, §§121.201-121.210, §§121.251-121.253, and §§121.5005-121.507; and 49 United States Code Annotated, §60101, *et seq*., are affected by the proposed new sections and amendments.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, and 117.001-117.101; Texas Utilities Code, §§121.201-121.210, §§121.251-121.253, and §§121.5005- 121.507; and 49 United States Code Annotated, §60101, *et seq*.

Cross-reference to statute: Texas Natural Resources Code, Chapters 81 and 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

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Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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# PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

## CHAPTER 59. CONTINUING EDUCATION REQUIREMENTS

### 16 TAC §§59.1, 59.3, 59.10, 59.20, 59.21, 59.30, 59.51, 59.80, 59.90

The Texas Department of Licensing and Regulation ("Department") adopts new 16 Texas Administrative Code, Chapter 59, §§59.1, 59.3, 59.10, 59.20, 59.21, 59.30, 59.51, 59.80, and 59.90, regarding continuing education as published in the September 24, 2004, issue of the *Texas Register* (29 TexReg 9152). Sections 59.1, 59.3, 59.10, 59.20, 59.21, 59.30, and 59.90 are adopted without changes and will not be republished. Sections 59.51(d) and (e) and §59.80(a) and (b) are adopted with changes.

These rules are necessary to implement Texas Occupations Code, §51.405 which requires the Texas Commission of Licensing and Regulation ("Commission") to recognize, prepare, or administer continuing education programs for license holders. In response to this legislative mandate, the new rules are adopted to establish requirements for continuing education providers and courses. The new sections are rules of general applicability that eventually will apply to all occupations regulated by the Department that are subject to a continuing education requirement. At the present time, however, the new rules reference only the occupation of electricians, which will be the first occupation to which the new rules will apply.

In fulfilling its statutory responsibility to recognize and administer continuing education programs for license holders, the Department must be able to review and approve continuing education providers and courses. The Department must be able to determine whether providers have the capability to offer satisfactory continuing education and whether courses offered are relevant and appropriate for license holders. Pursuant to Texas Occupations Code, §51.202 the new rules prescribe fees which are reasonable and necessary to cover the costs to the Department of administering the continuing education program.

Changes from the proposed rules respond to public comments or otherwise reflect non-substantive variations from what was proposed. The Department's legal counsel has advised that the changes affect no new person, entities, or subjects other than those given notice and that compliance with the adopted rules will be less burdensome than under the proposed rules. Accordingly, republication of the adopted rules as proposed rules is not required.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The new rules, with the changes as adopted, were also reviewed and approved by the Electrical Safety and Licensing Advisory Board, which is a body that advises the Commission on the adoption of rules related to electricians. Electricians are the first Department licensees to whom the new rules will apply.

A number of public comments were received concerning the proposed new rules. Some comments appeared to be generally in favor of the proposed rules but recommended specific changes to the rules or raised questions about application of the rules. These comments are summarized as follows.

The Texas Auctioneers Association commented on the requirement in proposed §59.51(d) that a provider must issue a certificate of completion to a participant no later than five days after the course completion date. The commenter recommended increasing this time period to ten days. The commenter also recommended increasing from five to ten days the time period in proposed §59.51(e) for a provider to submit a course completion report to the Department. The commenter suggested that more time was necessary under these rule requirements to allow for "staff time" and "travel time." Several other commenters concurred with these recommended changes.

The Texas Ground Water Association recommended increasing the time periods in proposed §59.51(d) and (e) from five to 15 days. This commenter argued that five days was not enough time to comply, especially for conventions and trade shows in which there would be many participants and multiple course offerings.

In response to these comments, the Commission adopts these rules with a change to §59.51(d) to increase the time period in question from five to 15 days. The Commission adopts these rules with a change to §59.51(e) to increase the time period in question to seven days. The Commission acknowledges that a provider may need more than five days physically to prepare a course completion certificate and deliver that document to the participant. Fifteen days should allow sufficient time for preparation of the document and mailing or other delivery to the participant. The Commission, however, believes that seven days is a sufficient period of time in which to comply with §59.51(e). The Department will create an Internet-based computer system for providers to submit the information in the course completion report. Therefore, providers will not need additional time to create a physical document or to mail or otherwise deliver a document to the Department.

A number of commenters complained that the fees in proposed §59.80 were excessive, particularly the fees for provider registration application and provider renewal application, which were both set at $800. Some commenters remarked that these fees would be especially burdensome for small businesses. One commenter suggested the amount of $500 for a provider application or renewal; another commenter suggested $400. Other commenters remarked that the fees in general were too high but did not suggest specific amounts. In response to these comments, the Commission adopts these rules with changes to §59.80(a) and (b), lowering the fee for a provider application to $250 per occupation and lowering the fee for a provider renewal application to $250 per occupation. After further consideration by Department staff, it was determined that these lower amounts should be sufficient to cover the cost of administering the continuing education program. The number of potential providers is unknown, so it is not possible at this time to conduct a precise analysis of the potential revenue generated by these

fees. As with other Department fees, the Department will periodically review the fees in §59.80 to determine whether they are set at the appropriate level to cover the costs associated with this program. The Commission will adjust the fees upward or downward, through the rulemaking process, as necessary. The Commission makes no change to the fees in §59.80(c) and (d). The Commission believes that the fee of $100 for a course approval per occupation is set at an appropriate level. Department staff likely will spend considerable time reviewing applications and course materials to determine whether the course is suitable for continuing education credit for a particular occupation. The $100 fee is believed to be necessary to cover the costs in staff time and resources. Likewise, the fee of $25 is considered necessary to cover the cost of issuing a revised or duplicate registration.

The Texas Auctioneers Association suggested defining the term "course" to specify whether that term refers to a single topic or a day with multiple topics. The term "Continuing Education Courses or Courses" is defined in §59.10(3) as "Department-approved courses that may be completed to satisfy continuing education requirements." The Commission believes that this is a sufficient definition. In addition, §59.30(l) requires that a course must comprise at least one hour of continuing education credit to be approved. Aside from this requirement, the new rules essentially leave to the provider the decision of whether a course is limited to a single topic or covers multiple topics. Under §59.30(j), the Department will evaluate the content of each course to determine how many hours of continuing education credit will be awarded for that course. Each occupation will have its own unique requirements for the topics that must be covered, and, in general the new rules allow the provider to decide whether these topics should be combined into one longer course or divided into shorter courses. The Commission sees no reason to limit these choices by rule. The Commission makes no change in response to this comment.

Two commenters expressed that there is a possible conflict between §59.30(m) and §59.30(n) regarding Department audits of providers and courses. Section 59.30(m) states that Department employees and representatives conducting an audit may enroll and attend a course without identifying themselves as Department employees and representatives. Section 59.30(n) states that Department employees and representatives performing an audit may not be required to pay any fee to the provider. The Commission believes that both of these subsections have operative effect. To fulfill the Department's enforcement responsibilities it is necessary for Department employees and representatives to be able to attend courses without revealing their identities. The Commission recognizes that, as a practical matter, a Department employee may not be able to attend a course without revealing his or her identity and also avoid paying a fee to the provider to enroll in the course. However, Department employees may in certain instances choose to identify themselves before attending a course, and the rules allow this flexibility. In any event, the Commission believes it necessary to make clear in the rules that a Department employee should not be required to pay to attend a course for the purpose of performing the employee's audit duties. This would be an unnecessary expense to the Department. The Commission makes no change in response to this comment.

Several commenters expressed that courses should not be required to be held in person but should be allowed to be delivered through other methods, such as the Internet. The new rules do not prohibit these alternative delivery methods and do not require that a course must be held in person. Under §59.51, a provider must ensure that courses are delivered in a manner conducive to learning, but the Commission does not intend this language necessarily to require an in-person method of delivery, such as a classroom presentation. The Commission anticipates that courses delivered by an alternative method will be approved. The Commission makes no change in response to this comment.

A commenter objected to the requirement in §59.30(f)(2) for a provider to submit to the Department along with the application for course approval copies of textbooks, videos, tapes, handouts, study materials, and any additional documentation. The commenter particularly objected to providing copies of code books, such as the National Electrical Code, and expensive videos. Another commenter stated that the requirement to provide the information in §59.30(f)(2) is necessary. The Commission believes that the information required in §59.30 is essential for the Department to conduct a meaningful review of the course. Department staff must be able to examine the course materials to determine whether the course content is relevant and appropriate for licensees and to determine how many hours of continuing education credit should be awarded for the course. However, the Commission does not intend the language in §59.30(f)(2) to require a provider to furnish code books, such as the National Electrical Code, which are readily accessible to Department staff. In addition, the Department will return course materials to the provider upon request if the provider pays the expenses of shipping the materials. The Commission makes no change to the rules in response to these comments.

One commenter suggested that the language of §59.30(i) gives the Department too little authority to disapprove courses. That subsection states that courses designed specifically to promote a manufacturer's product will not be considered for approval. The Commission believes that this subsection, in conjunction with other provisions of the new rules, gives sufficient authority to the Department to disapprove courses. The Commission anticipates that continuing education in various occupations will necessarily contain information and training related to particular products, such as those that are prevalent in an industry. Such a course may contain valuable educational material and be appropriate for continuing education. On the other hand, the Department needs the authority to disapprove a course with substantial promotional or advertising, as opposed to educational, content. The Commission believes that §59.30(i) strikes the correct balance. It recognizes that courses may contain some reference to products but does not allow courses designed specifically to promote a product to be approved. In addition, §59.30(j) states that the Department will determine the number of hours of continuing education credit for a course. If a course contains some promotional content that is not deemed substantial enough to disapprove the entire course under §59.30(i), the Department may use its authority under §59.30(j) to approve the course only for the number of hours that corresponds to the educational, as opposed to promotional, content of the course. The Commission makes no change to the rules in response to this comment.

The Houston Area Safety Council, through its legal counsel, made several comments. This organization wanted language added to the rules to allow the Department to assign credit hours for self-paced (presumably computer-based) courses. The rules as adopted already allow the Department to assign credit hours for all types of courses, which would include computer based, self-paced courses. Section 59.30(k) states that one hour of continuing education credit is equivalent to 50 minutes of actual

instruction time. The rules contemplate that Department staff will evaluate the content of each course to determine how many hours of credit are appropriate for that course. The Commission is not persuaded that the rules need to distinguish between different types of courses in how credit hours are assigned. The Commission makes no change in response to this comment.

The same commenter suggested changing §59.51(d) to allow a provider to issue an identification card to a participant in lieu of a course completion certificate. The identification card would not contain certain information required to be in a completion certificate, such as a signature of the provider representative, provider registration number, and the license type and number of the participant. The Commission acknowledges that it may be beneficial to a provider to issue an identification card to participants rather than issuing a paper certificate. The rules do not specify the form of the completion certificate, so the rules would allow for issuance of a completion certificate in the form of a card. However, the Commission believes that it is necessary for the certificate, whether it is in the form of a card or in some other form, to include all of the information required by §59.51(d). This information is necessary so that the participant will have a sufficient record of completion of the course that is independent of the provider's records. If provider records are unavailable or if there is a conflict between the participant's records and the provider's, the information in the certificate can be a means of establishing that the participant completed the course. The signature requirement is a means of assuring that the certificate is genuine. The Commission does not believe that the issuance of certificates with the required information is an unduly burdensome requirement. The Commission makes no change in response to this comment.

The same commenter addressed §59.51(g), which requires a provider to furnish to a participant copies of a participant's records within ten days of the participant's request. The comment indicated that this requirement is too broad and should apply only to records of courses completed by the participant. The Commission agrees that the requirement should not apply more broadly than that but does not see a need to change the rule language. The Commission makes no change in response to this comment.

Finally, the same commenter remarked that some courses it offers require the participant to pass an examination. The commenter does not wish examination materials, such as test questions, provided to the Department to be subject to public disclosure. Testing is not a required component of continuing education, so a provider is not required to furnish examination materials to the Department when applying for course approval. If a provider chooses to furnish examination materials, the provider may request that the materials, as with other course materials, be returned to the provider. The Department will do so if the provider pays the expense of shipping the materials. If the Department receives a public information request for materials in its possession, the Department will respond to the request according to the provisions of the Public Information Act. The Commission does not believe that any changes to the rules are appropriate in response to this comment.

One commenter suggested that only "professional education groups" should be allowed to offer courses. It is not clear what is meant by the term "professional education groups." The new rules do not limit who may be a provider as long as that person demonstrates the capability to meet Department requirements. The rules contemplate that the Department will also conduct a thorough review of the content of the provider's courses before approving the courses for continuing education credit. The Commission believes that the approval process for providers and courses as set forth in the new rules is adequate and makes no change in response to this comment.

In the context of courses for electricians, some commenters objected to the provision in §59.30(c) that course approvals are valid for one year. These commenters recommended approving electrician courses to coincide with National Electrical Code revisions, which are published every three years. The Commission believes that approving all courses, including those for electricians, annually is more appropriate. Continuing education for all licensees should be current and incorporate recent developments in the industry. Annual approval of courses furthers this goal. Annual approval of courses also is consistent with annual license renewal for licensees. If courses were approved for a three-year period, it is possible that a licensee could take the same unchanged course for up to three years. This would not be consistent with the purpose of continuing education, which is to increase or maintain the licensee's skill and competence. In the case of electricians, continuing education must include more than just the National Electrical Code; it must also include coverage of state law and rules that govern the conduct of electricians. The law and rules may change more often than every three years and require more frequent revisions to courses. For these reasons, the Commission makes no change to the rules in response to these comments.

Other comments were opposed to the rules in general, and these comments are summarized as follows. Some commenters disagreed with the requirement for a licensee to take continuing education. Comments of this nature are not properly addressed to these rules because the requirement for a licensee to take continuing education is a statutory requirement. Texas Occupations Code, §51.405 states, "The commission shall recognize, prepare, or administer continuing education programs for license holders. A license holder must participate in the programs to the extent required by the commission to keep the person's license." In addition, various statutes governing particular occupations contain a requirement for the licensee to complete continuing education in order to renew a license. For example, Texas Occupations Code §1305.168 requires certain electrician licensees to complete four hours of continuing education. The new rules implement these statutory requirements. The Commission does not have the authority to alter the statutory continuing education requirements. This would require legislative changes. Some of the comments of this nature complained of the potential cost to the licensee of having to complete continuing education. With regard to the cost to the licensee, these rules as adopted reduce the proposed fees for provider registration and renewal. These reduced costs to the provider likely will be passed in some measure to the licensee and, therefore, will ease the burden of compliance on the licensee as well as the provider. Otherwise, the Commission makes no change in response to these comments.

The new rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department. In particular, the new rules implement §51.405.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the adoption.

*§59.51. Responsibilities of Providers.*

(a) A provider must ensure that courses are delivered in a manner conducive to learning.

(b) A provider must include in all advertisements for a continuing education course the provider's number and the course number assigned to it by the department. Provider web page announcements concerning courses are considered advertisements for purposes of this rule.

(c) A provider must ensure that instructors possess both the subject matter knowledge they are teaching as well as the teaching ability required to impart the information.

(d) No later than 15 days after the course completion date, a provider must issue to each participant who attended the entire course a certificate of completion that includes the following information:

(1) name and number of course;

(2) course completion date;

(3) provider name and number;

(4) number of hours of continuing education credit for which the course is approved;

(5) signature of the provider representative; and

(6) name, license type and license number of the participant who attended.

(e) A provider must submit to the department, on the appropriate department-approved form, a course completion report no later than seven days after the course completion date. The report shall include the following information:

(1) name and number of course;

(2) course completion date;

(3) provider name and number;

(4) the location where the course was taught;

(5) the number of participants to whom a certificate was issued; and

(6) the name, license type and license number of each participant to whom a certificate of completion was issued.

(f) A provider must retain participant course completion records for a period of two years after completion of a course.

(g) Upon request, a provider shall provide to a participant, within ten days of the date of the request, copies of the participant's records. A reasonable fee to cover copying costs may be charged to the participant.

(h) Upon request, a provider shall provide information, including copies of specified records, to the department within ten days of the date of the request.

(i) A provider shall cooperate fully with the department, its employees and representatives in the investigation of a complaint or performance of an audit.

(j) A provider may not publish false or misleading advertisements.

(k) An advertisement which contains a fee charged by a provider shall display all fees for the course in the same place in the advertisement and with the same degree of prominence. If the provider requires participants to purchase course materials which are not included in the tuition, such fees must appear in the advertisement.

(l) Providers are responsible for the conduct and administration of their courses, including the punctuality of classroom sessions, verification of participant attendance and instructor performance. Providers shall ensure that their courses are administered in substantially the same manner as represented in the application for course approval.

*§59.80. Fees.*

(a) Provider application fee per occupation: $250.

(b) Provider renewal application fee per occupation: $250.

(c) Course-approval fee per occupation: $100.

(d) Issuance of a revised or duplicate registration: $25.

(e) All fees paid to the department are non-refundable.

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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William H, Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7348

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## CHAPTER 73. ELECTRICIANS

**16 TAC §73.25**

The Texas Department of Licensing and Regulation ("Department") adopts new 16 Texas Administrative Code, §73.25, regarding continuing education as published in the September 24, 2004, issue of the *Texas Register* (29 TexReg 9158), with changes.

This rule is necessary to implement Texas Occupations Code, §1305.168, which requires four hours of continuing education to renew certain types of electrician licenses. Section 1305.168(c) states that the executive director by rule shall approve continuing education courses, course content, and course providers. The new rule is also necessary to implement Texas Occupations Code, §51.405, which authorizes the Commission to recognize, prepare, or administer continuing education programs for license holders. Accordingly, the new rule establishes requirements or clarifies statutory requirements for licensees, providers, and courses in the electrician program. General requirements for continuing education providers and courses are contained in new rules at 16 Texas Administrative Code, Chapter 59. The provisions of §73.25 apply in concert with the new rules in Chapter 59.

Electrician licensees will begin to renew their licenses as early as March 2005. Under Texas Occupations Code, §1305.168, these licensees will be required to complete continuing education before renewing. This new rule, in conjunction with the new Chapter 59, is necessary to establish the continuing education program for electricians so that licensees will be able to complete continuing education timely. Because of this short time frame,

§73.25(h) is necessary to allow licensees to complete continuing education hours before a course is approved by the Department.

Changes from the proposed rule respond to public comments or otherwise reflect non-substantive variations from the proposed new section. The Department's legal counsel has advised that the changes affect no new person, entities, or subjects other than those given notice and that compliance with the adopted rule will be less burdensome than under the proposed rule. Accordingly, republication of the adopted rule as a proposed rule is not required.

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The new rule, with the changes as adopted, were also reviewed and approved by the Electrical Safety and Licensing Advisory Board ("Board"), which is a body that advises the Commission on the adoption of rules related to electricians.

Upon recommendation from Department staff, the Board approved three changes to the proposed rule, and the Commission adopts the rule with these changes. First, §73.25(e)(1) has been changed to clarify that courses in the National Electrical Code may include coverage of the current version of the code as approved by the National Fire Protection Association, in addition to the version of the code adopted under Texas Occupations Code, §1305.101. Second, the same language was added to §73.25(g)(1). There typically will be some delay between the publication of the current version of the National Electrical Code and its adoption by the Commission. In the interim, continuing education providers naturally will want to cover the most current material. The current version of the National Electrical Code generally will contain much of the same information as the adopted version but with some revisions. The Commission has determined that these revisions, in addition to the adopted version of the code, are an appropriate subject for continuing education.

Third, §73.25(h) has been changed by deleting the requirement that a provider must submit a course completion report to the Department within 30 days after approval of the course in order for a licensee to receive credit. After further consideration, this requirement was considered unnecessary. As long as the provider submits the required information to the Department, Department staff will be able to award credit to the licensee. A provider's failure to comply with the 30-day deadline would have resulted in the licensee not receiving credit. This would seem to be a harsh result to the licensee from a provider's failure to act timely.

The Department drafted and distributed the proposed rule to persons internal and external to the agency. A number of public comments were received concerning the new rule. Some comments appeared to be generally in favor of the proposed rule but recommended specific changes to the rule or raised questions about application of the rule. These comments are summarized as follows.

Several commenters expressed that courses should not be required to be held in person but should be allowed to be delivered through other methods, such as the Internet. The new rule does not prohibit these alternative delivery methods and does not require that a course must be held in person. Section 73.25 specifies the subject matter of continuing education courses but does not dictate the method of delivery of the course. Likewise, the new Chapter 59 rules do not require course to be held in person. The Commission anticipates that courses delivered by an alternative method will be approved. The Commission makes no change in response to these comments.

Some commenters remarked that courses should not be subject to approval annually. Rather the commenters recommended approving electrician courses to coincide with National Electrical Code revisions, which are published every three years. The Commission believes that approving courses annually is more appropriate. Continuing education for licensees should be current and incorporate recent developments in the industry. Annual approval of courses furthers this goal. Annual approval of courses also is consistent with annual license renewal for licensees. If courses were approved for a three-year period, it is possible that a licensee could take the same unchanged course for up to three years. This would not be consistent with the purpose of continuing education, which is to increase or maintain the licensee's skill and competence. In the case of electricians, continuing education must include more than just the National Electrical Code; it must also include coverage of state law and rules that govern the conduct of electricians. The law and rules may change more often than every three years and require more frequent revisions to courses. For these reasons, the Commission makes no change to the rule in response to these comments.

Other comments appeared to be opposed to the rule in general, and these comments are summarized as follows. Some commenters disagreed with the requirement for a licensee to take continuing education. Similarly, one commenter remarked that a licensee should not be required to take continuing education every year. Another commenter expressed that more than four hours of continuing education should be required. Comments of this nature are not properly addressed to the rule because the requirement for a licensee to take continuing education is a statutory requirement. Texas Occupations Code, §51.405 states, "The commission shall recognize, prepare, or administer continuing education programs for license holders. A license holder must participate in the programs to the extent required by the commission to keep the person's license." In addition, Texas Occupations Code, §1305.168 requires that to renew a license certain electrician licensees must complete four hours of continuing education annually. The new rule implements these statutory requirements. The Commission does not have the authority to alter the statutory continuing education requirements. This would require legislative changes. The Commission makes no change in response to these comments.

A commenter objected to the fact that many licensees who will be renewing their licenses in 2005 will have had less than a full year to complete continuing education hours. The requirement for these licensees to complete continuing education before renewing their licenses is contained in Texas Occupations Code, §1305.168. The Commission does not have the authority to change this statutory requirement by rule. However, §73.25(h) does allow a licensee to receive continuing education credit for hours of instruction completed before a provider's course was approved by the Department. The provider must obtain approval of the course, submit a completion report to the Department showing that the licensee completed those hours, and submit documentation to satisfy the Department that the hours of instruction offered prior to approval of the course were substantially similar to the approved course. The Commission makes no change in response to this comment.

The new rule is adopted under Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing

a program regulated by the Department. In addition, the new rule implements Texas Occupations Code, §1305.168.

The statutory provisions affected by the adoption are those set forth in Chapter 51 and Chapter 1305, Texas Occupations Code. No other statutes, articles, or codes are affected by the adoption.

*§73.25. Continuing Education.*

(a) Terms used in this section have the meanings assigned by Chapter 59 of this title, unless the context indicates otherwise.

(b) To renew a license listed in Texas Occupations Code, §1305.168(a), a licensee must complete four hours of continuing education in courses approved by the department.

(c) The continuing education hours must have been completed within the term of the current license, in the case of a timely renewal. For a late renewal, the continuing education hours must have been completed within one year prior to the date of renewal.

(d) A licensee may not receive continuing education credit for attending the same course more than once for one renewal.

(e) For each annual renewal, a licensee must complete a course, or combination of courses, dedicated to instruction in:

(1) the National Electrical Code, as adopted under Title 8, Occupations Code §1305.101, or the current version of the National Electrical Code, as approved by the National Fire Protection Association; and

(2) state law and rules that regulate the conduct of licensees.

(f) A licensee shall retain a copy of the certificate of completion for a course for one year after the date of completion. In conducting any inspection or investigation of the licensee, the department may examine the licensee's records to determine compliance with this subsection.

(g) To be approved under Chapter 59 of this title, a provider's course must be dedicated to instruction in:

(1) the National Electrical Code, as adopted under Title 8, Occupations Code §1305.101, or the current version of the National Electrical Code, as approved by the National Fire Protection Association; and/or

(2) state law and rules that regulate the conduct of licensees.

(h) If a provider files a course approval application prior to January 1, 2005 and the department subsequently approves the course, a provider may submit to the department a completion report for hours of instruction completed from March 1, 2004 to the course approval date. The completion report must be submitted on the appropriate department-approved form. Continuing education credit will be awarded to a participant under this subsection if the provider submits sufficient documentation to satisfy the department that the hours of instruction offered prior to the course approval date were substantially similar to the course subsequently approved by the department.

(i) Section 59.51(d) of this title does not apply to hours of instruction or courses completed prior to the course approval date under subsection (h) of this section.

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

Filed with the Office of the Secretary of State on November 4, 2004.

TRD-200406623
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: November 24, 2004
Proposal publication date: September 24, 2004
For further information, please call: (512) 463-7348

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# TITLE 19. EDUCATION

## PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

### CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

### SUBCHAPTER D. DUAL CREDIT PARTNERSHIPS BETWEEN SECONDARY SCHOOLS AND TEXAS PUBLIC COLLEGES

**19 TAC §4.83**

The Texas Higher Education Coordinating Board adopts amendments to §4.83 concerning dual credit partnerships, without changes to the proposed text as published in the August 6, 2004, issue of the *Texas Register* (29 TexReg 7616). Specifically, this amendment will define advanced placement as the College Board Advanced Placement program.

The following comment was received regarding the amendments:

Comments: One comment was received supporting the amendments.

Response: The staff agrees with the comment.

The amendments are adopted under the Texas Education Code, §§29.182, 29.184, 61.027, 61.076(J), 130.001(b)(3) - (4), 130.008, 130.090, and 135.06(d), which gives the Coordinating Board the authority to regulate dual credit partnerships between public two-year associate degree-granting institutions and public universities with secondary schools.

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 November 3, 2004.

TRD-200406581
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 23, 2004
Proposal publication date: August 6, 2004
For further information, please call: (512) 427-6114

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## CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES AND/OR HEALTH-RELATED INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

## SUBCHAPTER A. GENERAL PROVISIONS

### 19 TAC §5.6

The Texas Higher Education Coordinating Board adopts amendments to §5.6, concerning uniform use of the Common Admission Application without changes to the proposed text as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7830). Specifically, the amendments clarify that institutions that use the common application may not alter it in any way and clarify which institutions share in the cost of the electronic application, how each institution's portion is calculated, and billing information. The amendments also make the terminology used uniform throughout the rules and bring the rules up to date with current procedures.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §51.762, which states that the Coordinating Board, with the assistance of an advisory committee composed of representatives of general academic teaching institutions and in consultation with affected general academic teaching institutions, shall adopt by rule a common admission application form for use by a person seeking admission as a freshman student to a general academic teaching institution.

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

Filed with the Office of the Secretary of State on November 8, 2004.

TRD-200406690
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 28, 2004
Proposal publication date: August 13, 2004
For further information, please call: (512) 427-6114

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## CHAPTER 21. STUDENT SERVICES

## SUBCHAPTER P. PROFESSIONAL NURSES' STUDENT LOAN REPAYMENT PROGRAM

### 19 TAC §21.500

The Texas Higher Education Coordinating Board adopts amendments to §21.500, concerning the Professional Nurses' Student Loan Repayment Program without changes to the proposed text as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7831). Specifically, the amendments create a section titled "Authority and Purpose." The "Authority" subsection describes specifically where in the Texas Education Code the enabling statute may be found, making it easy to refer to the law. The amendments will ensure consistency of style among Board rules.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, § 61.654, which authorizes the Coordinating Board to establish and administer an educational loan repayment program for registered nurses.

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 November 8, 2004.

TRD-200406666
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: November 28, 2004
For further information, please call: (512) 427-6114

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### 19 TAC §§21.501 - 21.513

The Texas Higher Education Coordinating Board adopts the repeal of §§21.501 - 21.513, concerning the Professional Nurses' Student Loan Repayment Program without changes to the proposed text as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7831). Specifically, deleting the sections titled "Administration" and "Delegation of Powers and Duties" necessitates repealing §§21.501 - 21.513 in order that the remaining sections may be renumbered.

No comments were received regarding the repeal of these sections.

The repeal is adopted under the Texas Education Code, §61.654, which authorizes the Coordinating Board to establish and administer an educational loan repayment program for registered nurses.

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 November 8, 2004.

TRD-200406668
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: November 28, 2004
For further information, please call: (512) 427-6114

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### 19 TAC §§21.501 - 21.511

The Texas Higher Education Coordinating Board adopts new §§21.501 - 21.511, concerning the Professional Nurses' Student Loan Repayment Program without changes to the proposed text as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7832). Specifically, the new sections reflect the necessary renumbering as a result of deleting the sections titled "Administration" and "Delegation of Powers and Duties."

No comments were received regarding the new sections.

The new sections are adopted under the Texas Education Code, § 61.654, which authorizes the Coordinating Board to establish and administer an educational loan repayment program for registered nurses.

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 November 8, 2004.

TRD-200406667
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 28, 2004
Proposal publication date: August 13, 2004
For further information, please call: (512) 427-6114

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## SUBCHAPTER Q. LICENSED VOCATIONAL NURSES' STUDENT LOAN REPAYMENT PROGRAM

### 19 TAC §21.530

The Texas Higher Education Coordinating Board adopts amendments to §21.530, concerning the Licensed Vocational Nurses' Student Loan Repayment Program without changes to the proposed text as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7833). Specifically, the amendments would create a section titled "Authority and Purpose." The "Authority" subsection would describe specifically where in the Texas Education Code the enabling statute may be found, making it easy to refer to the law. The amendments would ensure consistency of style among Board rules.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §61.654, which authorizes the Coordinating Board to establish and administer an educational loan repayment program for licensed vocational nurses.

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 November 8, 2004.

TRD-200406669
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 28, 2004
Proposal publication date: August 13, 2004
For further information, please call: (512) 427-6114

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### 19 TAC §§21.531 - 21.542

The Texas Higher Education Coordinating Board adopts the repeal of §§21.531 - 21.542, concerning the Licensed Vocational Nurses' Student Loan Repayment Program, without changes to the proposed text as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7834). Specifically, deleting the sections titled "Administration" and "Delegation of Powers and Duties" necessitates repealing §§21.531 - 21.542 in order that the remaining sections may be renumbered.

The repeal is adopted under the Texas Education Code, §61.654, which authorizes the Coordinating Board to establish and administer an educational loan repayment program for licensed vocational nurses.

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 November 8, 2004.

TRD-200406671
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 28, 2004
Proposal publication date: August 13, 2004
For further information, please call: (512) 427-6114

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### 19 TAC §§21.531 - 21.540

The Texas Higher Education Coordinating Board adopts new §§21.531 - 21.540, concerning the Licensed Vocational Nurses' Student Loan Repayment Program, with changes to §21.531 and §21.533 of the proposed text as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7834). Sections 21.532; 21.534 - 21.540 are being adopted without changes and will not be republished. Specifically, the new sections reflect the necessary renumbering as a result of deleting the sections titled "Administration" and "Delegation of Powers and Duties."

The following comment was received regarding the new sections:

Comment: The Assistant General Counsel of the Board of Nurse Examiners commented that on February 1, 2004, the Board of Vocational Nurse Examiners, which regulated the practice of licensed vocational nurses in Texas, ceased to exist as a separate agency. Licensed vocational nurses are now under the Board of Nurse Examiners.

Response: Staff agreed and deleted the word "Vocational" from references to the licensing agency in § 21.531(4) and § 21.533.

The new sections are adopted under the Texas Education Code, §61.654, which authorizes the Coordinating Board to establish and administer an educational loan repayment program for licensed vocational nurses.

*§21.531. Definitions.*

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

(1) Board--the Texas Higher Education Coordinating Board.

(2) Commissioner--the commissioner of higher education, the chief executive officer of the Board.

(3) Pro rata--a proportionate basis upon which payment amounts will be scaled, depending upon the share of a state employee's full work year worked by the loan repayment recipient.

(4) LVN--Licensed Vocational Nurse who is licensed to work as such in the State of Texas by the Board of Nurse Examiners for the State of Texas.

(5) Service period--a twelve-month period for which a licensed vocational nurse qualifies for repayment of student loans.

*§21.533. Eligible Nurse.*

A nurse who is licensed by the Board of Nurse Examiners for the State of Texas and against whom no professional disciplinary action has been taken. Further, the nurse must provide the Board all data required to determine his or her eligibility.

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 November 8, 2004.

TRD-200406670
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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Proposal publication date: August 13, 2004
For further information, please call: (512) 427-6114

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## SUBCHAPTER T. MATCHING FUND EMPLOYMENT PROGRAM FOR PROFESSIONAL NURSING STUDENTS

### 19 TAC §21.620

The Texas Higher Education Coordinating Board adopts amendments to §21.620, concerning the Matching Fund Employment Program for Professional Nursing Students without changes to the proposed text as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7836). Specifically, the amendments would create a section titled "Authority and Purpose." The "Authority" subsection would describe specifically where in the Texas Education Code the enabling statute may be found, making it easy to refer to the law. The amendments would ensure consistency of style among Board rules.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §61.653, which authorizes the Coordinating Board to establish and administer a matching fund program for professional nursing students.

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 November 8, 2004.

TRD-200406672
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 28, 2004
Proposal publication date: August 13, 2004
For further information, please call: (512) 427-6114

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### 19 TAC §§21.621 - 21.638

The Texas Higher Education Coordinating Board adopts the repeal of §§21.621 - 21.638, concerning the Matching Fund Employment Program for Professional Nursing Students without changes to the proposed text as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7836). Specifically, deleting the sections titled "Administration" and "Delegation of Powers and Duties" necessitates repealing §§21.621 - 21.638 in order that the remaining sections may be renumbered.

No comments were received regarding the repeal of these sections.

The repeal is adopted under the Texas Education Code, §61.653, which authorizes the Coordinating Board to establish and administer a matching fund program for professional nursing students.

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

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TRD-200406674
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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Proposal publication date: August 13, 2004
For further information, please call: (512) 427-6114

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### 19 TAC §§21.621 - 21.636

The Texas Higher Education Coordinating Board adopts new §§21.621 - 21.636, concerning the Matching Fund Employment Program for Professional Nursing Students without changes to the proposed text as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7837). Specifically, the new sections reflect the necessary renumbering as a result of deleting the sections titled "Administration" and "Delegation of Powers and Duties."

No comments were received regarding the new sections.

The new sections are adopted under the Texas Education Code, §61.653, which authorizes the Coordinating Board to establish and administer a matching fund program for professional nursing students.

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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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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Proposal publication date: August 13, 2004
For further information, please call: (512) 427-6114

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## SUBCHAPTER U. MATCHING FUND EMPLOYMENT PROGRAM FOR VOCATIONAL NURSING STUDENTS

### 19 TAC §21.650

Texas Higher Education Coordinating Board adopts amendments to §21.650, concerning the Matching Fund Employment Program for Vocational Nursing Students, without changes to the proposed text as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7841). Specifically, the amendments would create a section titled "Authority and Purpose." The "Authority" subsection would describe specifically where in the Texas Education Code the enabling statute may be found, making it easy to refer to the law. The amendments would ensure consistency of style among Board rules.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §61.653, which authorizes the Coordinating Board to establish and administer a matching fund program for vocational nursing students.

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 November 8, 2004.

TRD-200406675
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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### 19 TAC §§21.651 - 21.668

The Texas Higher Education Coordinating Board adopts the repeal of §§21.651 - 21.668, concerning the Matching Fund Employment Program for Vocational Nursing Students without changes to the proposal as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7842). Specifically, deleting the sections titled "Administration" and "Delegation of Powers and Duties" necessitates repealing §§21.651 - 21.668 in order that the remaining sections may be renumbered.

No comments were received regarding the repeal of these sections.

The repeal is adopted under the Texas Education Code, §61.653, which authorizes the Coordinating Board to establish and administer a matching fund program for vocational nursing students.

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 November 8, 2004.

TRD-200406677
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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Proposal publication date: August 13, 2004
For further information, please call: (512) 427-6114

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### 19 TAC §§21.651 - 21.666

The Texas Higher Education Coordinating Board adopts new §§21.651 - 21.666, concerning the Matching Fund Employment Program for Vocational Nursing Students. Sections 21.652 and 21.653 are being adopted with changes to the proposed text as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7842). Sections 21.651; 21.654 - 21.666 are being adopted without changes and will not be republished. Specifically, the new sections reflect the necessary renumbering as a result of deleting the sections titled "Administration" and "Delegation of Powers and Duties."

The following comment was received regarding the new sections.

Comment: The Assistant General Counsel of the Board of Nurse Examiners, commented that on February 1, 2004, the Board of Vocational Nurse Examiners, which regulated the practice of licensed vocational nurses in Texas, ceased to exist as a separate agency. Licensed vocational nurses are now under the Board of Nurse Examiners.

Response: Staff agreed and deleted the word "Vocational" from references to the licensing agency in §21.652(1)(D) and §21.653(a)(1).

The new sections are adopted under the Texas Education Code, §61.653, which authorizes the Coordinating Board to establish and administer a matching fund program for vocational nursing students.

*§21.652. Advisory Committee.*

The Board shall appoint an advisory committee to advise the Board concerning assistance provided under this subchapter to vocational nursing students and vocational nurses.

(1) The advisory committee consists of

(A) a chair named by the Board;

(B) one representative named by the Licensed Vocational Nurses Association of Texas;

(C) one representative named by the Texas Organization of Nurse Executives;

(D) one representative named by the Board of Nurse Examiners of the State of Texas;

(E) two representatives of vocational nursing educational programs named by the Texas Association of Vocational Nurse Educators;

(F) one representative named by the Texas Health Care Association;

(G) one representative named by the Texas Association of Homes for the Aging.

(2) The costs of participation on an advisory committee shall be borne by that member or the organization or agency the member represents.

(3) The duties of the advisory committee are to:

(A) advise the Board on appropriate rules for the employment program;

(B) advise the Board on the priorities of emphasis among the scholarship, employment and loan repayment programs provided for in Chapter 61, Subchapter L, of the Texas Education Code;

(C) advise the Board on the amount of money needed to adequately fund the employment program; and

(D) assist the Board in the dissemination of information on the employment program.

*§21.653. Eligible Institution.*

(a) An eligible institution is a nonprofit facility which:

(1) offers a program in vocational nursing accredited by the Board of Nurse Examiners of the State of Texas;

(2) has its parent campus in Texas; and

(3) follows the Civil Rights Act of 1964, Title VI (Public Law 88-353) in avoiding discrimination in admissions.

(b) The chief executive officer of an eligible institution shall designate a Program Officer. Unless otherwise specified by the chief executive officer of the institution, the Director of Financial Aid shall serve as the program officer.

(1) The program officer shall be the Board's on-campus agent to certify all institutional transactions, activities and reports with respect to the program described in this subchapter.

(2) The program officer is responsible for notifying the Board should the student drop below half-time enrollment in the relevant program of study, fail to meet academic progress standards for their program of study or otherwise cease to be eligible to participate in the employment program.

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

Filed with the Office of the Secretary of State on November 8, 2004.

TRD-200406676

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114

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## SUBCHAPTER Z. GRADUATE NURSES' EDUCATION LOAN REPAYMENT PROGRAM

### 19 TAC §21.800

The Texas Higher Education Coordinating Board adopts amendments to §21.800, concerning the Graduate Nurses' Education Loan Repayment Program without changes to the proposed text as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7847). Specifically, the amendments would create a section titled "Authority and Purpose." The "Authority" subsection would describe specifically where in the Texas Education Code the enabling statute may be found, making it easy to refer to the law. The amendments would ensure consistency of style among Board rules.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §61.654, which authorizes the Coordinating Board to establish and administer an educational loan repayment program for registered nurses and licensed vocational nurses.

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 November 8, 2004.

TRD-200406678

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Effective date: November 28, 2004

Proposal publication date: August 13, 2004

For further information, please call: (512) 427-6114

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### 19 TAC §§21.801 - 21.813

The Texas Higher Education Coordinating Board adopts the repeal of §§21.801 - 21.813, concerning the Graduate Nurses' Education Loan Repayment Program without changes to the proposal as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7847). Specifically, deleting the sections titled "Administration" and "Delegation of Powers and Duties" necessitates repealing §§21.801 - 21.813 in order that the remaining sections may be renumbered.

No comments were received regarding the repeal of these sections.

The repeal is adopted under the Texas Education Code, §61.654, which authorizes the Coordinating Board to establish and administer an educational loan repayment program for registered nurses and licensed vocational nurses.

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 November 8, 2004.

TRD-200406680
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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**19 TAC §§21.801 - 21.811**

The Texas Higher Education Coordinating Board adopts new §§21.801 - 21.811, concerning the Graduate Nurses' Education Loan Repayment Program without changes to the proposed text as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7848). Specifically, the new sections reflect the necessary renumbering as a result of deleting the sections titled "Administration" and "Delegation of Powers and Duties."

No comments were received regarding the new sections.

The new sections are adopted under the Texas Education Code, §61.654, which authorizes the Coordinating Board to establish and administer an educational loan repayment program for registered nurses and licensed vocational nurses.

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 November 8, 2004.

TRD-200406679
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 28, 2004
Proposal publication date: August 13, 2004
For further information, please call: (512) 427-6114

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## SUBCHAPTER AA. RECIPROCAL EDUCATIONAL EXCHANGE PROGRAM

**19 TAC §21.901**

The Texas Higher Education Coordinating Board adopts amendments to §21.901 of Board rules, concerning the Reciprocal Educational Exchange Program, without changes to the proposed text as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7849). Specifically, the amendments would create a section titled "Authority and Purpose." The "Authority" subsection would describe specifically where in the Texas Education Code the enabling statute may be found, making it easy to refer to the law. The amendments would ensure consistency of style among Board rules.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §54.060, Subsection (c), which authorizes the Coordinating Board to adopt rules to establish a program with other nations for the exchange of students.

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 November 8, 2004.

TRD-200406681
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 28, 2004
Proposal publication date: August 13, 2004
For further information, please call: (512) 427-6114

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**19 TAC §§21.902 - 21.911**

The Texas Higher Education Coordinating Board adopts the repeal of §§21.902 - 21.911, concerning the Reciprocal Educational Exchange Program, without changes to the proposed text as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7850). Specifically, deleting the section titled "Delegation of Powers and Duties" necessitates repealing §§21.902 - 21.911 in order that the remaining sections may be renumbered.

No comments were received regarding the repeal of these sections.

The repeal is adopted under the Texas Education Code, §54.060, Subsection (c), which authorizes the Coordinating Board to adopt rules to establish a program with other nations for the exchange of students.

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 November 8, 2004.

TRD-200406683
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 28, 2004
Proposal publication date: August 13, 2004
For further information, please call: (512) 427-6114

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**19 TAC §§21.902 - 21.910**

The Texas Higher Education Coordinating Board adopts new §§21.902 - 21.910, concerning the Reciprocal Educational Exchange Program, without changes to the proposed text as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7850). Specifically, the new sections reflect the necessary renumbering as a result of deleting the section titled "Delegation of Powers and Duties."

No comments were received regarding the new sections.

The new sections are adopted under the Texas Education Code, §54.060, Subsection (c), which authorizes the Coordinating Board to adopt rules to establish a program with other nations for the exchange of students.

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 November 8, 2004.

TRD-200406682
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 28, 2004
Proposal publication date: August 13, 2004
For further information, please call: (512) 427-6114

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## SUBCHAPTER DD. MINORITY DOCTORAL INCENTIVE PROGRAM OF TEXAS

### 19 TAC §21.970

The Texas Higher Education Coordinating Board adopts amendments to §21.970, concerning the Minority Doctoral Incentive Program of Texas, without changes to the proposed text as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7851). Specifically, the amendments would create a section titled "Authority and Purpose." The "Authority" subsection would describe specifically where in the Texas Education Code the enabling statute may be found, making it easy to refer to the law. The amendments would ensure consistency of style among Board rules.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §54.162, which authorizes the Coordinating Board to establish, administer, and adopt rules for the Minority Doctoral Incentive Program.

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

Filed with the Office of the Secretary of State on November 8, 2004.

TRD-200406684
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 28, 2004
Proposal publication date: August 13, 2004
For further information, please call: (512) 427-6114

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### 19 TAC §§21.971 - 21.982

The Texas Higher Education Coordinating Board adopts the repeal of §§21.971 - 21.982 of Board rules, concerning the Minority Doctoral Incentive Program of Texas, without changes to the proposed text as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7852). Specifically, deleting the sections titled "Administration" and "Delegation of Powers and Duties" necessitates repealing §§21.971 - 21.982 in order that the remaining sections may be renumbered.

No comments were received regarding the repeal of these sections.

The repeal is adopted under the Texas Education Code, §54.162, which authorizes the Coordinating Board to establish, administer, and adopt rules for the Minority Doctoral Incentive Program.

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

Filed with the Office of the Secretary of State on November 8, 2004.

TRD-200406686
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 28, 2004
Proposal publication date: August 13, 2004
For further information, please call: (512) 427-6114

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### 19 TAC §§21.971 - 21.980

The Texas Higher Education Coordinating Board adopts new §§21.971 - 21.980, concerning the Minority Doctoral Incentive Program of Texas, without changes to the proposed text as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7852). Specifically, the new sections reflect the necessary renumbering as a result of deleting the sections titled "Administration" and "Delegation of Powers and Duties."

No comments were received regarding the new sections.

The new sections are adopted under the Texas Education Code, §54.162, which authorizes the Coordinating Board to establish, administer, and adopt rules for the Minority Doctoral Incentive Program.

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

Filed with the Office of the Secretary of State on November 8, 2004.

TRD-200406685
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 28, 2004
Proposal publication date: August 13, 2004
For further information, please call: (512) 427-6114

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## SUBCHAPTER HH. EXEMPTION PROGRAM FOR TEXAS AIR AND ARMY NATIONAL GUARD/ROTC STUDENTS

### 19 TAC §21.1052

The Texas Higher Education Coordinating Board adopts amendments to §21.1052, concerning the Exemption Program for Texas Air and Army National Guard/ROTC Students, without changes to the proposed text as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7855). Specifically, the amendments would create a section titled "Authority and Purpose." The "Authority" subsection would describe specifically where in the Texas Education Code the enabling statute may be found, making it easy to refer to the law. The amendments would ensure consistency of style among Board rules.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, former §54.215 -derived from Acts 1995, 74th Legislature, §54.212- relating to Texas National Guard/ROTC Students.

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 November 8, 2004.

TRD-200406687
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 28, 2004
Proposal publication date: August 13, 2004
For further information, please call: (512) 427-6114

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### 19 TAC §§21.1053 - 21.1070

The Texas Higher Education Coordinating Board adopts the repeal of §§21.1053 - 21.1070, concerning the Exemption Program for Texas Air and Army National Guard/ROTC Students without changes to the proposal as published in the August 13, 2004, issue of the *Texas Register* (29 T exReg 7855). Specifically, deleting the sections titled "Administration" and "Delegation of Powers and Duties" necessitates repealing §§21.1053 - 21.1070 in order that the remaining sections may be renumbered.

No comments were received regarding the repeal of these sections.

The repeal is adopted under the Texas Education Code, former §54.215, derived from Acts 1995, 74th Legislature, §54.212, relating to Texas National Guard/ROTC Students.

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 November 8, 2004.

TRD-200406689
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 28, 2004
Proposal publication date: August 13, 2004
For further information, please call: (512) 427-6114

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### 19 TAC §§21.1053 - 21.1068

The Texas Higher Education Coordinating Board adopts new §§21.1053 - 21.1068, concerning the Exemption Program for Texas Air and Army National Guard/ROTC Students. Section 21.1060 is adopted with changes to the proposed text as published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7856). Sections §§21.1053 - 21.1059, 21.1061 - 21.1068 are adopted without changes and will not be republished. Specifically, the new sections reflect the necessary renumbering as a result of deleting the sections titled "Administration" and "Delegation of Powers and Duties."

No comments were received regarding the new sections.

The new sections are adopted under the Texas Education Code, former §54.215, derived from Acts 1995, 74th Legislature, §54.212, relating to Texas National Guard/ROTC Students.

*§21.1060. Award Amounts.*

(a) Tuition and fee exemption amounts. Selected recipients may receive an exemption for the amount of their actual tuition and fee charges at their institution for up to four full academic years (including summer terms when funds are available) while enrolled as undergraduates. If the student's program of study extends to more than four years, the exemption will not be extended to that additional time period.

(b) Room and Board exemption amounts. Selected recipients may receive an exemption for an amount equal to their actual dormitory room and Board expenses but not to exceed the average on-campus room and Board figure reflected in the college's typical student budget on file at the Board for up to two years. If the student is not living in campus housing, but the institution does have such housing, the amount to be awarded as a room and Board exemption is the average charged for a student in that institution's campus housing. If the institution does not have campus housing, the exemption may equal the average room and Board allowance reported to the Board by public universities for that year for students who are receiving some type of financial assistance.

(c) Exemptions and reimbursements to students. If student selection is completed prior to the payment of tuition and fees or room and Board for a particular term, the institution is to exempt the selected students from the payment of the appropriate charges. If selection is completed after the payment of such charges, the Board shall reimburse students for the appropriate amounts as indicated in subsections (a) and (b) of this section.

(d) Reimbursements for institutions. Each term, after selected students have enrolled at their institutions, the institutions may send the Board, on a form provided by the Board, a request for reimbursement for the exempted charges. The Board, as soon as possible, will issue checks to the institutions for the indicated amounts.

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

Filed with the Office of the Secretary of State on November 8, 2004.

TRD-200406688
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 28, 2004
Proposal publication date: August 13, 2004
For further information, please call: (512) 427-6114

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# TITLE 22. EXAMINING BOARDS

## PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

### CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

**22 TAC §153.5**

The Texas Appraiser Licensing and Certification Board adopts amendments to 22 TAC §153.5, relating to Fees with changes to the proposed text as published in the September 24, 2004, issue of the *Texas Register*(29 TexReg 9161), and will be republished.

The adopted amendments implement provisions of SB 1152, 78th Legislature, Regular Session, which mandates that the Texas Appraiser Licensing and Certification Board collect online subscription fees for renewal of appraiser trainees and state licensed appraisers; and on-line subscription fees for an original application of certified general and certified residential, state licensed, provisional licensed and appraiser trainees. In §153.5 Fees (a) (17), "renewal fee" was changed to "application fee" for clarification.

The adopted amendments to §153.5 will set an online subscription fee of $5 for an appraiser trainee renewal, $10 for a state licensed appraiser renewal, $10 for a certified general, certified residential, state license and provisional licensed application, $5 for a provisional licensed application, and $5 for an appraiser trainee application. All fees so collected are paid to the Texas Online Authority and not retained by the Texas Appraiser Licensing and Certification Board.

The adopted amendments will also set a $5 fee for a Pocket Identification available for certified general, certified residential, state licensed, and provisional licensed appraisers.

No written comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Appraiser Licensing and Certification Act (Texas Occupations Code, Chapter 1103), Subchapter D., Board Powers and Duties, which provides the board the authority to adopt rules. §1103.156, Fees, §1103.151. Rules Relating to Certification and Licenses; Subchapter E. Certificate and License Requirements, §1103.211 Certificate or License Renewal; Continuing Education and §1103.208, Provisional License for Certain Appraiser Trainee; and Subchapter H. Appraiser Trainees, §1103.353. Application for Appraiser Trainees may be affected by these proposed amendments.

*§153.5. Fees.*

(a) The board shall charge and the commissioner shall collect the following fees:

(1) an application or renewal fee for a general certification of $200, for residential certification of $150, or for licensing of $125;

(2) an application or renewal fee for approval as an appraiser trainee of $75;

(3) no fee is required for notifying the board of a change of office location;

(4) a fee for nonresident appraiser registration of $150;

(5) an annual federal registry fee of $25;

(6) an application fee by reciprocity set at the amount of the fee charged in the appraiser's state of present licensure or certification;

(7) a fee for providing each licensure history of $10;

(8) a fee for an addition or termination of sponsorship of an appraiser trainee of $20;

(9) a fee for replacing a lost or destroyed certificate of $15;

(10) a fee for a returned check equal to that charged for a returned check by the Texas Real Estate Commission;

(11) an on-line subscription renewal fee of $10 for certified appraisers for establishing and maintaining on-line renewals;

(12) a fee for an extension of time to complete required continuing education of $200;

(13) a fee to request a certificate or license be placed on inactive status of $50;

(14) a fee to request a return to active status of $50;

(15) an on-line subscription renewal fee of $5 for appraiser trainees for establishing and maintaining on-line renewals;

(16) an on-line subscription renewal fee of $10 for state licensed appraiser for establishing and maintaining on-line renewals;

(17) an on-line subscription application fee of $10 for certified general, certified residential, and state licensed appraisers for establishing and maintaining on-line applications;

(18) an on-line subscription application fee of $5 for provisional licensed appraisers for establishing and maintaining on-line applications;

(19) an on-line subscription application fee of $5 for appraiser trainees for establishing and maintaining on-line applications; and

(20) a fee of $5 for a Pocket ID for certified general, certified residential, state licensed, and provisional licensed appraisers.

(b) Fees must be submitted in U.S. currency or funds payable to the order of the Texas Appraiser Licensing and Certification Board. Fees are not refundable once an application has been accepted for filing. Persons who have submitted a check which has been returned, and who have not made good on that check within thirty days, for whatever reason, shall submit all future fees in the form of a cashier's check or money order.

(c) Appraisers certified or licensed by the board shall pay an annual registry fee required under federal law. All registry fees collected by the board shall be deposited in the state treasury to the credit of a special fund to be known as the appraiser registry fund. The board shall send the fees to the council as required by federal law.

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 November 8, 2004.

TRD-200406692
Wayne Thorburn
Commissioner
Texas Appraiser Licensing and Certification Board
Effective date: November 28, 2004
Proposal publication date: September 24, 2004
For further information, please call: (512) 465-3950

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# TITLE 25. HEALTH SERVICES

## PART 7. TEXAS MEDICAL DISCLOSURE PANEL

### CHAPTER 601. INFORMED CONSENT

**25 TAC §§601.1 - 601.8**

The Texas Medical Disclosure Panel (panel) adopts amendments to §§601.1 - 601.8, concerning informed consent. Sections 601.7 and 601.8 are adopted with changes to the proposed text as published in the August 6, 2004, issue of the *Texas Register* (29 TexReg 7643). Sections 601.1 - 601.6 are adopted without changes, and therefore the sections will not be republished.

These amendments are adopted in accordance with the Texas Civil Practice and Remedies Code, §74.102, that requires the panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure, and Government Code, §2001.039, which requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedures Act). Sections 601.1 - 601.8 have been reviewed and the panel has determined that reasons for adopting the sections continue to exist in that rules on this subject are needed; however, the rules need revision as described in this preamble. The sections cover general provisions; procedures requiring full disclosure of specific risks and hazards - List A; procedures requiring no disclosure of specific risks and hazards - List B; disclosure and consent form; radiation therapy disclosure and consent form; history; informed consent for electroconvulsive therapy; and hysterectomy disclosure and consent form.

The amendment to §601.1 reflects the recodification of the enabling statute to the Texas Civil Practice and Remedies Code, and new section titles. The amendments to §§601.2 - 601.5, 601.7 and 601.8 change section titles and update references. The amendment to §601.6 adds new subsections (j) and (k) to record historical information regarding recodification of the statute and the amendment to §601.2 effective March 18, 2004.

The panel received no public comments during the comment period for these amendments. However, the panel is making the following minor changes due to the provisions of House Bill 2292, 78th legislature, Regular Session, 2003, which abolished the Texas Department of Mental Health and Mental Retardation (MHMR) and transferred its power and duties regarding mental health community services and state hospital programs to the Texas Department of State Health Services, and to correct an incorrect reference in a Figure in the proposed rules.

Change: Concerning §601.7(a)-(c), the reference to the Texas Department of Mental Health and Mental Retardation and the acronym, MHMR, was changed to the "Texas Department of State Health Services (DSHS)".

Change: Concerning §601.8, the Texas Department of Health was changed to the "Texas Department of State Health Services".

Change: The panel corrected the publication of Figure: 22 TAC §601.8(2) in the proposed rule to 25 TAC §601.8(2). The Spanish version of the "Disclosure and Consent for Hysterectomy" form was incorrectly cited as "22 TAC" and was corrected to "25 TAC" on the top of the form.

The amendments are adopted under the Texas Civil Practice and Remedies Code, §74.102, which provides the Texas Medical Disclosure Panel with the authority to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards and to prepare the form(s) for the treatments and procedures which do require disclosure.

*§601.7. Informed Consent for Electroconvulsive Therapy.*

(a) The Health and Safety Code (HSC), §578.003, requires the Texas Department of State Health Services (DSHS) to adopt a standard written consent form to be used when electroconvulsive therapy is considered. HSC §578.003 requires that the form include the minimum information which is also required by the Texas Medical Disclosure Panel (panel) for electroconvulsive therapy. HSC §578.003 states that use of the consent form prescribed by (DSHS) in the manner described by HSC §578.003 creates a rebuttable presumption that the disclosure requirements of Texas Civil Practice and Remedies Code, §74.102 have been met.

(b) The panel recognizes that DSHS has adopted a written consent form for electroconvulsive therapy in §405.108 of this title (relating to Informed Consent to ECT).

(c) If the DSHS consent form is in compliance with the HSC §578.003, and contains the minimum information required by the panel, a physician or health care provider using the DSHS consent form for electroconvulsive therapy is not required to use both the DSHS form and the panel's disclosure and consent form. This section does not constitute approval of DSHS's current consent form or of DSHS's assessment of the risks and hazards associated with electroconvulsive therapy.

*§601.8. Disclosure and Consent Form for Hysterectomy.*

The Texas Medical Disclosure Panel adopts the following form which shall be used to provide informed consent to a patient or person authorized to consent for the patient of the possible risks and hazards involved in the hysterectomy surgical procedure named in the form. This form is to be used in lieu of the general disclosure and consent form adopted in §601.4(a) of this title (relating to Disclosure and Consent Form) for disclosure and consent relating to only hysterectomy procedures. Providers are required to use the form to obtain consent for hysterectomies performed at least 90 days following publication of this adopted section in the *Texas Register*. Providers shall have the form available in both English and Spanish language. Both versions are available from the Texas Department of State Health Services.

(1) English form.

Figure: 25 TAC §601.8(1)

(2) Spanish form.

Figure: 25 TAC §601.8(2)

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 November 8, 2004.

TRD-200406636
Melba W.G. Swafford, M.D.
Chairperson
Texas Medical Disclosure Panel
Effective date: November 28, 2004
Proposal publication date: August 6, 2004
For further information, please call: (512) 458-7236

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# TEXAS DEPARTMENT OF INSURANCE

**Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L**

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Department of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the proposal is adopted. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the proposal is adopted. The Administrative Procedure Act, Government Code, Chapters 2001 and 2002, does not apply to department action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

## Texas Department of Insurance

Proposed Action on Rules

EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96

Notice is given that the Commissioner of Insurance will consider a proposal made in a staff petition which seeks an amendment to the Texas Automobile Rules and Rating Manual (the Manual). Staff's petition (Ref. No. A-1104-21-I) was filed on November 10, 2004.

A public hearing on this matter will not be held unless a separate request for a hearing is submitted to the Office of the Chief Clerk during the comment period as defined herein.

The purpose of this amendment is to more accurately inform renters regarding their personal automobile insurance policy liability coverage while operating a rental vehicle. The required disclosure will ensure compliance with Texas Insurance Code Article 21.09, §1(g) which requires, in part, that insurance may not be issued under Article 21.09 unless, at each location at which sales of insurance policies occur, brochures or other written materials are prominently displayed and readily available to the prospective consumer that disclose that the policies offered by the rental car company may provide a duplication of coverage already provided by a consumer's personal automobile insurance policy.

Currently under Manual Rule 141 Subsection E, the required disclosure contains the statement, "Your Texas automobile policy provides coverage for your liability while operating a rental vehicle." Staff proposes an amendment to Manual Rule 141 Subsection A, "Eligibility," to re-state that this rule applies to automobile rental liability insurance that is issued on the Texas Automobile Rental Liability Policy and the Texas Automobile Rental Liability Excess Policy. Staff also proposes to amend Subsection E, "Required Disclosures," to revise the language that informs a prospective buyer of rental liability insurance in a rental car transaction that he or she may already have an insurance policy that duplicates the coverage that would be provided by a automobile rental liability insurance policy. Staff proposes to delete the portion of the current disclosure which states, "Your Texas automobile policy provides coverage for your liability while operating a rental vehicle. Automobile policies issued in other states or countries may also duplicate this coverage." Staff proposes to replace the deleted language with "Your personal automobile insurance policy may provide coverage for your liability while operating a rental vehicle."

When Manual Rule 141 was originally adopted, insurers providing automobile rental liability coverage and personal automobile coverage were required to use the prescribed automobile policies, including the Texas Automobile Rental Liability Policy, Texas Automobile Rental Liability Excess Policy and the Texas Personal Automobile Policy (PAP). The PAP provides coverage for a covered persons' liability while operating a rental vehicle. However, pursuant to the legislative enactment of Senate Bill 14, effective June 11, 2003, Insurance Code Articles 5.13-2 and 5.145 now provide that the regulation of policy forms and endorsements for personal and commercial automobile are governed by the provisions of Article 5.13-2, §8. In accordance with this legislation, which was intended to promote competition and consumer choice, insurers may now file policy forms and endorsements for approval and use in Texas. Since insurers may offer individual company specific personal and commercial automobile policy forms and endorsements, coverage sold through their agents, including rental car companies or their franchisees, may vary by company and product. Insurer policy forms may or may not provide coverage for a covered persons' liability while operating a rental vehicle.

Staff believes the language in the required disclosure should be amended to more accurately inform renters that their personal automobile insurance policy may provide coverage for their liability while operating a rental vehicle.

Texas Insurance Code Articles 5.10, 5.13-2, 5.96, 5.98, 5.101 and 21.09 and §36.001 authorize the filing of this notification and the action requested of the Commissioner.

A copy of the petition, including an exhibit with the full text of the proposed amendment to the Manual, is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 463-6326; refer to (Ref. No. A-1104-21-I).

Comments on the proposed changes must be submitted in writing no later than 5:00 p.m. on December 20, 2004 to the Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be simultaneously submitted to Marilyn Hamilton , Associate Commissioner, Property and Casualty Program, Texas Department of Insurance, P. O. Box 149104, MC 104-PC, Austin, Texas 78714-9104.

This notification is made pursuant to Insurance Code Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

TRD-200406764

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: November 10, 2004

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## Final Action on Rules

EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96 ADOPTION OF AMENDMENTS TO THE TEXAS PRIVATE PASSENGER AUTOMOBILE STATISTICAL PLAN

The Commissioner of Insurance (Commissioner) adopts amendments to the Texas Private Passenger Automobile Statistical Plan (Stat Plan)-Quarterly Market Report (QMR) as proposed by the staff of the Texas Department of Insurance (Staff) in a petition filed on September 14, 2004. Notice of the staff's petition (Ref.A-0904-16-I) was published in the September 24, 2004 issue of the *Texas Register* (29 Tex. Reg. 9209). The Department received no comments regarding the Staff's proposed amendments.

The Commissioner has determined that the amendments are necessary to implement the reporting of Group 2 vehicle experience in order for TAIPA to have more complete and accurate information for assignment quota and assessment purposes. Group 2 "other private passenger automobile business" vehicles are subject to assignment through the Texas Automobile Insurance Plan Association (TAIPA) in the same fashion as Group 1 "regular private passenger automobiles". However, no complete data on the numbers of Group 2 vehicles insured are collected by the QMR or by any other report required by the Stat Plan.

The adopted amendments make the following changes to the Stat Plan: Quarterly Market Report:

amend and add codes under Section 4 - Experience To Be Reported to include Group 2 vehicles.

amend and add codes under Section 7 - Policy and Membership Fees to include Group 2 vehicles.

amend Section 13 - Summary Reporting by Driver Class to not be limited to Group 1 vehicles.

amend and add codes under Numeric Field 15 of the Record Layout and Field Definitions to include Group 2 vehicles.

amend and add codes under Numeric Field 40-48 of the Record Layout and Field Definitions to include Group 2 vehicles.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code Article 5.96 and §§38.204 and 38.207.

The amendments as adopted by the Commissioner are filed with the Department's Chief Clerk under Ref. No. A-0904-16-I and are incorporated by reference into Commissioner's Order 04-1075.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the amendments to the Texas Private Passenger Automobile Statistical Plan as described herein, be adopted to be effective for first quarter 2005 experience reporting for all affected insurers.

TRD-200406731
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: November 9, 2004

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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 Review

Department of Information Resources

**Title 1, Part 10**

The Department of Information Resources (DIR) files this notice of intention to review and consider for readoption, revision or repeal Title 1, Texas Administrative Code, Chapter 201, §201.19, concerning Quality Assurance Guidelines. The review and consideration of the rule are conducted in accordance with Texas Government Code §2001.039. The review will include, at a minimum, an assessment by DIR of whether the reasons the rule was initially adopted continue to exist and whether the rule should be readopted.

Any questions or written comments pertaining to this rule review may be submitted to Renée Mauzy, General Counsel, via mail at P. O. Box 13564, Austin, Texas 78711, via facsimile transmission at (512) 475-4759 or via electronic mail at renee.mauzy@dir.state.tx.us. The deadline for comments is thirty (30) days after publication of this notice in the *Texas Register*. Any proposed changes to the rule as a result of the rule review will be published in the Proposed Rule section of the *Texas Register*. The proposed rule changes will be open for public comment prior to final adoption or repeal of the rule by DIR in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

§201.19. Quality Assurance Guidelines.

TRD-200406721
Renée Mauzy
General Counsel
Department of Information Resources
Filed: November 8, 2004

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## Adopted Rule Review

Railroad Commission of Texas

**Title 16, Part 1**

The Railroad Commission of Texas files this notice of completion of review and readoption of 16 TAC Chapter 3 relating to Oil and Gas Division. The notice of proposed review was published in the August 6, 2004, issue of the *Texas Register* (29 TexReg 7743). This review and consideration was conducted in accordance with Texas Government Code §2001.039. The agency's reasons for adopting these rules continue to exist; however, in a separate but concurrent rulemaking, the Commission has adopted some amendments to §§3.6, 3.9, 3.26, 3.28, 3.34, 3.36, 3.46, 3.49, 3.52, 3.55, 3.56, 3.81, 3.84, 3.93, 3.95, 3.97, 3.98, and 3.106, relating to Application for Multiple Completion; Disposal Wells; Separating Devices, Tanks, and Surface Commingling of Oil; Potential and Deliverability of Gas Wells To Be Ascertained and Reported; Gas To Be Produced and Purchased Ratably; Oil, Gas, or Geothermal Resource Operation in Hydrogen Sulfide Areas; Fluid Injection into Productive Reservoirs; Gas-Oil Ratio; Oil Well Allowable Production; Reports on Gas Wells Commingling Liquid Hydrocarbons before Metering; Scrubber Oil and Skim Hydrocarbons; Brine Mining Injection Wells; Gas Shortage Emergency Response; Water Quality Certification Definitions; Underground Storage of Liquid or Liquefied Hydrocarbons in Salt Formations; Underground Storage of Gas in Salt Formations; Standards for Management of Hazardous Oil and Gas Waste; and Sour Gas Pipeline Facility Construction Permit.

The adopted amendments will be filed with the *Texas Register* concurrently with this completed review and make only non-substantive changes, such as corrections to rule numbers and titles, agency names, typographical errors, etc. The adopted amendments involve no substantive changes in requirements or procedures.

The Commission received no comments on the proposed review or amendments.

Issued in Austin, Texas, on November 4, 2004.

TRD-200406622
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Filed: November 4, 2004

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# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §8.245(d)

Table 1. Typical Penalties.

| Rule | Guideline Penalty Amount |
|---|---|
| 16 TAC §3.70 - Pipeline Permits Required | $1,000 |
| 16 TAC §8.1 - General Applicability and Standards | $5,000 |
| 16 TAC §8.51 - Organization Report | $1,000 |
| 16 TAC §8.101 - Pipeline Integrity Assessment and Management Plans | $5,000 |
| 16 TAC §8.105 - Records | $5,000 |
| 16 TAC §8.110 - Operations and Maintenance Procedures | $5,000 |
| 16 TAC §8.115 - Construction Commencement Report | $5,000 |
| 16 TAC §8.201 - Pipeline Safety Program Fees | 10% of amount due |
| 16 TAC §8.203 - Supplemental Regulations | $5,000 |
| 16 TAC §8.205 - Written Procedure for Handling Natural Gas Leak Complaints | $1,000 |
| 16 TAC §8.210 - Reports | $5,000 |
| 16 TAC §8.215 - Odorization of Gas | $5,000 |
| 16 TAC §8.220 - Master Metered Systems | $5,000 |
| 16 TAC §8.225 - Plastic Pipe Requirements | $5,000 |
| 16 TAC §8.230 - School Piping Testing | $1,000 |
| 16 TAC §8.235 - Natural Gas Pipelines Public Education and Liaison | $5,000 |
| 16 TAC §8.240 - Discontinuance of Service | $10,000 |
| 49 CFR 192.613 - Continuing surveillance | $5,000 |
| 49 CFR 192.619 - Maximum allowable operating pressure | $5,000 |
| 49 CFR 192.625 - Odorization of gas | $5,000 |
| 49 CFR Part 192 - Transportation of Natural and Other Gas by Pipeline | $1,000 |
| 49 CFR Part 193 - Liquefied Natural Gas Facilities: Federal Safety Standards | $1,000 |
| 49 CFR Part 199 - Drug and Alcohol Testing | $ 500 |

Figure: 16 TAC §8.245(e)

Table 2. Penalty Enhancements.

| For violations that involve | Threatened or actual pollution | Threatened or actual safety hazard | Severity of violation or culpability of person changed with violation |
|---|---|---|---|
| Bay, estuary, or marine habitat | $5,000 to $25,000 | | |
| Impact to a residential or public area | | $1,000 to $15,000 | |
| Hazardous material release | | $2,000 to $25,000 | |
| Reportable incident or accident | | $5,000 to $25,000 | |
| Exceeding pressure control limits | | $5,000 to $20,000 | |
| Affected area exceeds 100 square feet | | | $10 per square foot |
| Time out of compliance | | | $100 to $2,000 for each month |
| Reckless conduct of person charged | | | up to double the total penalty |
| Intentional conduct of person charged | | | up to triple the total penalty |

Figure 1: 16 TAC §8.245(f)

Table 3. Penalty enhancements based on number of prior violations within seven years.

| Number of violations in the seven years prior to action | Enhancement amount |
|---|---|
| One | $1,000 |
| Two | $2,000 |
| Three | $3,000 |
| Four | $4,000 |
| Five or more | $5,000 |

Figure 2: 16 TAC §8.245(f)

Table 4. Penalty enhancements based on total amount of prior penalties within seven years.

| **Total administrative penalties assessed in the seven years prior to action** | **Enhancement amount** |
|---|---|
| Less than $10,000 | $1,000 |
| Between $10,000 and $25,000 | $2,500 |
| Between $25,000 and $50,000 | $5,000 |
| Between $50,000 and $100,000 | $10,000 |
| Over $100,000 | 10% of total amount |

Figure: 16 TAC §8.245(i)

Table 5. Penalty calculation worksheet.

| **Typical penalties from Table 1** | | |
|---|---|---|
| 1. 16 TAC §3.70 - Pipeline Permits Required | $1,000 | $ |
| 2. 16 TAC §8.1 - General Applicability and Standards | $5,000 | $ |
| 3. 16 TAC §8.51 - Organization Report | $1,000 | $ |
| 4. 16 TAC §8.101 - Pipeline Integrity Assessment and Management Plans | $5,000 | $ |
| 5. 16 TAC §8.105 - Records | $5,000 | $ |
| 6. 16 TAC §8.110 - Operations and Maintenance Procedures | $5,000 | $ |
| 7. 16 TAC §8.115 - Construction Commencement Report | $5,000 | $ |
| 8. 16 TAC §8.201 - Pipeline Safety Program Fees | 10% of amount due | $ |
| 9. 16 TAC §8.203 - Supplemental Regulations | $5,000 | $ |
| 10. 16 TAC §8.205 - Written Procedure for Handling Natural Gas Leak Complaints | $1,000 | $ |
| 11. 16 TAC §8.210 - Reports | $5,000 | $ |
| 12. 16 TAC §8.215 - Odorization of Gas | $5,000 | $ |
| 13. 16 TAC §8.220 - Master Metered Systems | $5,000 | $ |
| 14. 16 TAC §8.225 - Plastic Pipe Requirements | $5,000 | $ |
| 15. 16 TAC §8.230 - School Piping Testing | $1,000 | $ |
| 16. 16 TAC §8.235 - Natural Gas Pipelines Public Education and Liaison | $5,000 | $ |
| 17. 16 TAC §8.240 - Discontinuance of Service | $10,000 | $ |
| 18. 49 CFR 192.613 - Continuing surveillance | $5,000 | $ |
| 19. 49 CFR 192.619 - Maximum allowable operating pressure | $5,000 | $ |
| 20. 49 CFR 192.625 - Odorization of gas | $5,000 | $ |
| 21. 49 CFR Part 192 - Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards | $1,000 | $ |
| 22. 49 CFR Part 193 - Liquefied Natural Gas Facilities | $1,000 | $ |
| 23. 49 CFR Part 199 - Drug and Alcohol Testing | $ 500 | $ |
| **24. Subtotal of typical penalty amounts from Table 1 (lines 1 - 23, inclusive)** | | **$** |
| 25. Reduction for settlement before hearing: up to 50% of line 24 amt. | % | $ |
| **26. Subtotal: amount shown on line 24 less applicable settlement reduction (line 25)** | | **$** |
| **Penalty enhancement amounts for threatened or actual pollution or safety hazard from Table 2** | | |
| 27. Bay, estuary, or marine habitat | $5,000 - $25,000 | $ |
| 28. Impact to a residential or public area | $1,000 - $15,000 | $ |
| 29. Hazardous material release | $2,000 - $25,000 | $ |
| 30. Reportable incident or accident | $5,000 - $25,000 | $ |
| 31. Exceeding pressure control limits | $5,000 - $20,000 | $ |

| | | |
|---|---|---|
| **Penalty enhancements for severity of violation from Table 2** | | |
| 32. Affected area exceeds 100 square feet | $10 / square foot | $ |
| 33. Time out of compliance | $100-$2,000 / mo. | $ |
| **34. Subtotal: amount on line 26 plus all amounts on lines 27 through 33, inclusive** | | **$** |
| **Penalty enhancements for culpability of person charged from Table 2** | | |
| 35. Reckless conduct of person charged | double line 34 amt. | $ |
| 36. Intentional conduct of person charged | triple line 34 amt. | $ |
| **Penalty enhancements for number of prior violations within past seven years from Table 3** | | |
| 37. One | $1,000 | $ |
| 38. Two | $2,000 | $ |
| 39. Three | $3,000 | $ |
| 40. Four | $4,000 | $ |
| 41. Five or more | $5,000 | $ |
| **Penalty enhancements for amount of penalties within past seven years from Table 4** | | |
| 42. Less than $10,000 | $1,000 | $ |
| 43. Between $10,000 and $25,000 | $2,500 | $ |
| 44. Between $25,000 and $50,000 | $5,000 | $ |
| 45. Between $50,000 and $100,000 | $10,000 | $ |
| 46. Over $100,000 | 10% of total amount | $ |
| **47. Subtotal: line 34 plus amounts on lines 35 and/or 36 plus the amount shown on any one line from 37 through 36, inclusive** | | **$** |
| 48. Reduction for demonstrated good faith of person charged | | $ |
| **TOTAL PENALTY AMOUNT: amount on line 47 less any amount shown on line 48** | | **$** |

Figure: 25 TAC §601.8(1)

## DISCLOSURE AND CONSENT FOR HYSTERECTOMY

*TO THE PATIENT: You have the right, as a patient, to be informed about your condition and the recommended surgical, medical, or diagnostic procedure to be used so that you may make the decision whether or not to undergo the procedure after knowing the risks and hazards involved. This disclosure is not meant to scare or alarm you; it is simply an effort to make you better informed so you may give or withhold your consent to the procedure.*

NOTICE: Refusal to consent to a hysterectomy will not result in the withdrawal or withholding of any benefits provided by programs or projects receiving federal funds or otherwise affect your right to future care or treatment.

I (we) voluntarily request Dr. _____ as my physician, and such associates, technical assistants and other health care providers as they may deem necessary, to treat my condition which has been explained to me as:

_____

_____

_____

I (we) understand that the following surgical, medical, and/or diagnostic procedures are planned for me and I (we) voluntarily consent and authorize these procedures:

_____

_____

_____

I (we) understand that a hysterectomy is a removal of the uterus through an incision in the lower abdomen or vagina. I also understand that additional surgery may be necessary to remove or repair other organs, including an ovary, tube, appendix, bladder, rectum, or vagina.

I (we) understand that the hysterectomy is permanent and not reversible. I understand that I will not be able to become pregnant or bear children. I understand that I have the right to seek a consultation from a second physician.

I (we) (do) (do not) consent to the use of blood and blood products as deemed necessary. I (we) understand that the following risks and hazards may occur in connection with the use of blood and blood products:

1. Fever
2. Transfusion reaction which may include kidney failure or anemia
3. Heart failure
4. Hepatitis
5. AIDS (acquired immune deficiency syndrome)
6. Other infections

I (we) understand that no warranty or guarantee has been made to me as to result or cure.

Just as there may be risks and hazards in continuing my present condition without treatment, there are also risks and hazards related to the performance of the surgical, medical, and/or diagnostic procedures planned for me. I (we) realize that common to surgical medical, and/or diagnostic procedures is the potential for infection, blood clots in veins and lungs, hemorrhage, allergic reactions, and even death. I (we) also realize that the following risks and hazards may occur in connection with this particular procedure (check applicable procedure):

| ____ ABDOMINAL HYSTERECTOMY | ____ VAGINAL HYSTERECTOMY* |
|---|---|
| 1. Uncontrollable leakage of urine | 1. Uncontrollable leakage of urine. |
| 2. Injury to the bladder. | 2. Injury to the bladder. |
| 3. Sterility. | 3. Sterility. |
| 4. Injury to the tube (ureter) between the kidney and the bladder. | 4. Injury to the tube (ureter) between the kidney and the bladder. |
| 5. Injury to the bowel and/or intestinal obstruction. | 5. Injury to the bowel and/or intestinal obstruction. |
| | 6. Completion of operation by abdominal incision. |

*For LAPROSCOPICALLY ASSISTED VAGINAL HYSTERECTOMY, the additional risks include: damage to intra-abdominal structures (e.g. bowel, bladder, blood vessels, or nerves); intra-abdominal abscess and infectious complications; trocor site complications (e.g. hemotoma/bleeding, leakage of fluid, or hernia formation); conversion of the procedure to an open procedure; cardiac dysfunction.

ADDITIONAL COMMENTS:

_____

_____

_____

I (we) understand that anesthesia involves additional risks and hazards but I (we) request the use of anesthetics for the relief and protection from pain during the planned and additional procedures. I (we) realize the anesthesia may have to be changed possibly without explanation to me (us).

I (we) understand that certain complications may result from the use of any anesthetic including respiratory problems, drug reaction, paralysis, brain damage or even death. Other risks and hazards which may result from the use of general anesthetics range from minor discomfort to injury to vocal cords, teeth or eyes. I (we) understand that other risks and hazards resulting from spinal or epidural anesthetics include headache and chronic pain.

I (we) have been given an opportunity to ask questions about my condition, alternative forms of anesthesia and treatment, risks of nontreatment, the procedures to be used, and the risks and hazards involved, and I (we) believe that I (we) have sufficient information to give this informed consent.

I (we) certify this form has been fully explained to me, that I (we) have read it or have had it read to me, that the blank spaces have been filled in, and that I (we) understand its contents.

NAME OF PHYSICIAN EXPLAINING PROCEDURE:

_____

NAME OF PERSON PROVIDING MATERIALS:

_____

_____
PATIENT/OTHER LEGALLY RESPONSIBLE PERSON (signature required)

DATE: _____ TIME: _____A.M./P.M.

WITNESS:

_____
Signature

_____
Name (Print)

_____
Address (Street or P.O. Box)

_____
City, State, Zip Code

Figure: 25 TAC §601.8(2)

## INFORMACIÓN Y CONSENTIMIENTO PARA LA HISTERECTOMÍA

*AL PACIENTE: Como paciente, usted tiene el derecho a ser informada sobre su condición y el procedimiento de diagnóstico, médico o de cirugía recomendado a usarse para que, después de conocer los riesgos o peligros involucrados, pueda tomar la decisión de seguir con el procedimiento o no. Este formulario de información no tiene el propósito de asustara ni alarmarla, es sencillamente una medida para ayudarle a estar mejor informada para que pueda dar o no su consentimiento al procedimiento.*

AVISO: Rehusar a dar consentimiento a la histerectomía no resultará en la retención ni detención de ningún beneficio proporcionado por programas o proyectos que reciben fondos federales, ni le afectará de ninguna manera su derecho a obtener atención o tratamiento en el futuro.

Solicito que el (la) Dr. (a) _____sea mi doctor(a), y los socios, ayudantes tecnicos, y otros proveedores de cuidado médico, como se estime necesario para tratar mi condición, lo cual se me ha explicado de la siguiente forma:

_____

_____

_____

Comprendo que los siguientes procedimientos de diagnóstico, médicos y/o de cirugía han sido planificados exclusivamente para mi; y yo/nosotros voluntariamente damos consentimiento y autorización para estos procedimientos:

_____

_____

_____

Comprendo que una histerectomía es la extirpación del útero a través de una incisión en el abdomen inferior o a través de la vagina. También comprendo que cirugía adicional puede ser necesaria para extirpar o reparar otros órganos, que incluye un ovario, una trompa de Falopio, él apéndice, la vejiga, el recto, o la vágina.

Comprendo que la histerectomía es permanente e irreversible. Comprendo que no podré embarazarme ni dar a luz. Comprendo que tengo el derecho de obtener una segunda opinión de otro médico.

Comprendo que es posible que mi médico encuentre otras o diferentes condiciones que requieren distintos procedimientos adicionales de los ya planificados. Doy autorización a mi médico y los socios, ayudantes técnicos y otros proveedores de cuidado médico para realizar esos procedimientos adicionales que, en su opinión profesional, son convenientes.

Doy / no doy mi consentimiento para el uso de sangre y productos de sangre, como se estime conveniente. Comprendo que los siguientes riesgos o peligros pueden ocurrir en relación al uso de sangre y productos de sangre:

1. Fiebre
2. Reacción a la transfusión que puede incluir fallo de los riñones o anemia
3. Fallo cardiaco
4. Hepatitis
5. SIDA (sindrome imunodeficiencia adquirida)
6. Otras infecciones

Comprendo que no se me ha dado garantía en relación a resultados ni curación.

Así como puede haber riesgos y peligros al seguir con mi condición actual sin tratamiento, también existen riesgos y peligros relacionados con la ejecución de los procedimientos diagnósticos, médicos y/o de cirugía planificados para mi. Estoy consiente de los siguientes riesgos y peligros que pueden ocurrir en conección con este procedimiento particular (marque el procedimiento que aplica):

| ____ HISTERECTOMÍA ABDOMINAL | ____ HISTERECTOMÍA VAGINAL * |
|---|---|
| 1. Salida de la orina no controlable | 1. Salida de la orina no controlable. |
| 2. Daño a la vejiga | 2. Daño a la vejiga |
| 3. Esterilidad | 3. Esterilidad |
| 4. Dano al tubo (uréter) entre el riñon y la vejiga. | 4. Daño al tubo (uréter) entre el riñon y la vejiga. |
| 5. Daño al intestino y/o obstrucción intestinal. | 5. Daño al intestino y/o obstrucción intesinal. |
| | 6. Terminación de la operación a través de una incisión abdominal. |

* Para HISTERECTOMÍA VAGINAL LAPAROSCÓPICA ASISTIDA, se incluyen los siguientes riesgos: daño a las estructuras internas del abdomen (ejemplo: intestino, vejiga, conductos sanguíneos o nervios); abscesos abdominales internos y complicaciones infecciosas; complicaciones del *trocor site* (ejemplo: hematoma/sangrado, escurrimiento de liquido, o formación de hernia); conversión de procedimiento a un procedimiento abierto; malfuncionamiento cardíaco.

COMENTARIOS ADICIONALES:

_____

_____

_____

_____

Comprendo que la anestesia involucra riesgos y peligros adicionales, aún así solicito el uso de anestesia para el alivio de y protección contra dolor durante los procedimientos ya planificados y adicionales. Estoy consciente que es posible que la anestesia necesite cambiarse sin darme explicación previa.

Comprendo que pueden surgir ciertas complicaciones con el uso de anestesia, los cuales incluyen problemas respiratorios, reacción a drogas, parálisis, daño cerebral, o hasta muerte. Otros riesgos y peligros que pueden surgir por el uso de anestesia general varían desde malestares leves

hasta daño a las cuerdas vocales, los dientes, o los ojos. Comprendo que otros riesgos y peligros pueden resultar del uso de anestesia de la columna vertebral o epidural, que incluyen dolores de cabeza o dolor crónico.

Se me ha dado la oportunidad de hacer preguntas sobre mi condición, las formas alternas de anestesia y tratamiento, riesgos por no recibir tratamiento, procedimientos a usarse y los riesgos y peligros involucrados, y es mi opinión que tengo suficiente información para dar este consentimiento consciente.

Doy fe que he o se me ha leído este formulario, que los espacios para información se han llenado y que comprendo el contenido del presente.

NOMBRE DEL MÉDICO QUE LE EXPLICÓ EL PROCEDIMIENTO:

_____

NOMBRE DE LA PERSONAL QUE LE DIÓ LOS MATERIALES:

_____

_____

FIRMA DEL PACIENTE/OTRA PERSONAL LEGALMENTE RESPONSABLE (firma equerida)

FECHA:_____ HORA_____A.M./P.M.

TESTIGO:

_____

Firma

_____

Nombre (letra de molde)

_____

Dirección (Calle o Apartado Postal)

_____

Cuidad, Estado, Código Postal

Figure 1: 28 TAC §3.5206

**ALTERNATIVE 1**

**Assumes separate presumptive premium rates for Class E**

**Credit Life Insurance - Recommended Presumptive Premium Rates**
**All Classes Except Class E**

| Plan | Plan Description | | Rate |
|---|---|---|---|
| 1 | Single Premium, Reducing Coverage, Single Life | * | $0.331 per year per $100 initial insured indebtedness |
| 2 | Single Premium, Level Coverage, Single Life | * | $0.635 per year per $100 insured indebtedness |
| 3 | Outstanding Balance, Revolving Loan, Single Life | | $0.529 per month per $1000 outstanding insured indebtedness |
| 4 | Outstanding Balance, Other, Single Life | | $0.529 per month per $1000 outstanding insured indebtedness |
| 5 | Single Premium, Reducing Coverage, Joint Life | * | $0.496 per year per $100 initial insured indebtedness |
| 6 | Single Premium, Level Coverage, Joint Life | * | $0.953 per year per $100 insured indebtedness |
| 7 | Outstanding Balance, Revolving Loan, Joint Life | | $0.794 per month per $1000 outstanding insured indebtedness |
| 8 | Outstanding Balance, Other, Joint Life | | $0.794 per month per $1000 outstanding insured indebtedness |

* Single premium rates for plans 1, 2, 5, and 6 must be multiplied by the discount factor which is restated as follows:

Discount Factor $(1/(1 + ((i \times n)/24)))$

Where n = term of insurance coverage in months and i = .035 interest rate

**ALTERNATIVE 1**

**Assumes separate presumptive premium rates for Class E**

**Credit Life Insurance - Recommended Presumptive Premium Rates**
**Class E Alone**

| Plan | Plan Description | | Rate |
|---|---|---|---|
| 1 | Single Premium, Reducing Coverage, Single Life | * | $0.254 per year per $100 initial insured indebtedness |
| 2 | Single Premium, Level Coverage, Single Life | * | $0.488 per year per $100 insured indebtedness |
| 3 | Outstanding Balance, Revolving Loan, Single Life | | $0.406 per month per $1000 outstanding insured indebtedness |
| 4 | Outstanding Balance, Other, Single Life | | $0.406 per month per $1000 outstanding insured indebtedness |
| 5 | Single Premium, Reducing Coverage, Joint Life | * | $0.381 per year per $100 initial insured indebtedness |
| 6 | Single Premium, Level Coverage, Joint Life | * | $0.732 per year per $100 insured indebtedness |
| 7 | Outstanding Balance, Revolving Loan, Joint Life | | $0.610 per month per $1000 outstanding insured indebtedness |
| 8 | Outstanding Balance, Other, Joint Life | | $0.610 per month per $1000 outstanding insured indebtedness |

*Single premium rates for plans 1, 2, 5 and 6 must be multiplied by the discount factor which is restated as follows:

Discount Factor $(1/(1 + ((i \times n)/24)))$

Where n = term of insurance coverage in months and i = .035 interest rate

**ALTERNATIVE 1**

Exhibit 22-3

**Credit Disability Insurance - Recommended Presumptive Premium Rates**
**Class E Alone**

| Plan | Plan Description | Rate |
|---|---|---|
| 10 | Single Premium 14-day Retroactive | Multiply rate from Exhibit 22-4 times Discount Factor * |
| 11 | Single Premium 30-day Retroactive | Multiply rate from Exhibit 22-4 times Discount Factor * |
| 12 | Single Premium 14-day Non-Retroactive | Multiply rate from Exhibit 22-4 times Discount Factor * |
| 13 | Single Premium 30-day Non-Retroactive | Multiply rate from Exhibit 22-4 times Discount Factor * |
| 14 | Single Premium 90-day Non-Retroactive | $0.12 per year per $100 initial indebtedness times Discount Factor * |
| 16 | Outstanding Balance Revolving 14-day Retroactive | $1.64 per month per $1000 of outstanding insured indebtedness |
| 17 | Outstanding Balance Revolving 30-day Retroactive | $1.21 per month per $1000 of outstanding insured indebtedness |
| 18 | Outstanding Balance Revolving 14-day Non-Retroactive | $1.42 per month per $1000 of outstanding insured indebtedness |
| 19 | Outstanding Balance Revolving 30-day Non-Retroactive | $1.06 per month per $1000 of outstanding insured indebtedness |
| 22 | Outstanding Balance Other 14-day Retroactive | Multiply applicable Exhibit 22-4 rate by Conversion Formula ** |
| 23 | Outstanding Balance Other 30-day Retroactive | Multiply applicable Exhibit 22-4 rate by Conversion Formula ** |
| 24 | Outstanding Balance Other 14-day Non-Retroactive | Multiply applicable Exhibit 22-4 rate by Conversion Formula ** |
| 25 | Outstanding Balance Other 30-day Non-Retroactive | Multiply applicable Exhibit 22-4 rate by Conversion Formula ** |
| 26 | Outstanding Balance Other 90-day Non-Retroactive | Multiply Plan 14 SP without discount by Conversion Formula** |

* Single premium rates for plans 10 through 14 must be multiplied by the discount factor which is restated as follows:

Discount Factor (1/(1 + ((i X n)/24)))

Where n = term of insurance coverage in months and i = .035 interest rate

**Conversion Formula is as follows:

20/(n+1)

Where n = the term of the insurance coverage in months.

Coverage cannot be less than 6 months

**ALTERNATIVE 1**

Exhibit 22-4

**Credit Disability Insurance - Recommended Presumptive Premium Rates Per $100 of Initial Indebtedness**
**Class E Alone**

| Original Number of Equal Monthly Installments | Benefits Payable After: 14th Day of Disability | | 30th Day of Disability | | Original Number of Equal Monthly Installments | Benefits Payable After: 14th Day of Disability | | 30th Day of Disability | |
|---|---|---|---|---|---|---|---|---|---|
| | Retro | Non-Retro | Retro | Non-Retro | | Retro | Non-Retro | Retro | Non-Retro |
| | | | | | 61 | 3.07 | 2.84 | 2.25 | 1.99 |
| | | | | | 62 | 3.08 | 2.86 | 2.27 | 2.00 |
| 3 | 0.72 | 0.56 | | | 63 | 3.10 | 2.87 | 2.28 | 2.02 |
| 4 | 0.97 | 0.74 | | | 64 | 3.12 | 2.89 | 2.30 | 2.04 |
| 5 | 1.21 | 0.92 | | | 65 | 3.13 | 2.90 | 2.32 | 2.05 |
| 6 | 1.38 | 1.11 | 1.01 | 0.62 | 66 | 3.15 | 2.92 | 2.33 | 2.07 |
| 7 | 1.46 | 1.24 | 1.10 | 0.71 | 67 | 3.17 | 2.94 | 2.34 | 2.09 |
| 8 | 1.55 | 1.32 | 1.18 | 0.79 | 68 | 3.19 | 2.95 | 2.36 | 2.10 |
| 9 | 1.61 | 1.38 | 1.25 | 0.86 | 69 | 3.19 | 2.97 | 2.38 | 2.11 |
| 10 | 1.67 | 1.45 | 1.33 | 0.92 | 70 | 3.21 | 2.98 | 2.40 | 2.13 |
| 11 | 1.73 | 1.50 | 1.37 | 0.99 | 71 | 3.23 | 3.00 | 2.41 | 2.15 |
| 12 | 1.78 | 1.55 | 1.42 | 1.03 | 72 | 3.25 | 3.01 | 2.43 | 2.16 |
| 13 | 1.82 | 1.60 | 1.45 | 1.08 | 73 | 3.26 | 3.03 | 2.44 | 2.18 |
| 14 | 1.87 | 1.65 | 1.48 | 1.13 | 74 | 3.28 | 3.05 | 2.46 | 2.20 |
| 15 | 2.69 | 1.69 | 1.51 | 1.18 | 75 | 3.29 | 3.07 | 2.47 | 2.21 |
| 16 | 1.96 | 1.73 | 1.54 | 1.22 | 76 | 3.31 | 3.08 | 2.49 | 2.22 |
| 17 | 2.00 | 1.78 | 1.57 | 1.26 | 77 | 3.32 | 3.09 | 2.51 | 2.24 |
| 18 | 2.04 | 1.80 | 1.59 | 1.31 | 78 | 3.34 | 3.11 | 2.53 | 2.26 |
| 19 | 2.07 | 1.85 | 1.61 | 1.34 | 79 | 3.36 | 3.13 | 2.54 | 2.28 |
| 20 | 2.11 | 1.88 | 1.64 | 1.37 | 80 | 3.38 | 3.14 | 2.55 | 2.29 |
| 21 | 2.14 | 1.91 | 1.67 | 1.40 | 81 | 3.39 | 3.16 | 2.57 | 2.31 |
| 22 | 2.17 | 1.94 | 1.67 | 1.42 | 82 | 3.40 | 3.18 | 2.58 | 2.32 |
| 23 | 2.21 | 1.98 | 1.70 | 1.44 | 83 | 3.42 | 3.19 | 2.60 | 2.34 |
| 24 | 2.23 | 2.00 | 1.72 | 1.46 | 84 | 3.43 | 3.20 | 2.62 | 2.35 |
| 25 | 2.27 | 2.04 | 1.73 | 1.47 | 85 | 3.45 | 3.22 | 2.64 | 2.37 |
| 26 | 2.29 | 2.07 | 1.77 | 1.50 | 86 | 3.47 | 3.24 | 2.65 | 2.39 |
| 27 | 2.32 | 2.10 | 1.78 | 1.52 | 87 | 3.49 | 3.25 | 2.66 | 2.40 |
| 28 | 2.34 | 2.12 | 1.79 | 1.54 | 88 | 3.50 | 3.27 | 2.68 | 2.42 |
| 29 | 2.38 | 2.15 | 1.81 | 1.55 | 89 | 3.51 | 3.29 | 2.70 | 2.43 |
| 30 | 2.40 | 2.18 | 1.83 | 1.57 | 90 | 3.53 | 3.30 | 2.71 | 2.45 |
| 31 | 2.43 | 2.21 | 1.85 | 1.58 | 91 | 3.55 | 3.31 | 2.73 | 2.46 |
| 32 | 2.46 | 2.22 | 1.86 | 1.60 | 92 | 3.56 | 3.33 | 2.75 | 2.48 |
| 33 | 2.48 | 2.25 | 1.88 | 1.61 | 93 | 3.58 | 3.35 | 2.76 | 2.50 |
| 34 | 2.51 | 2.28 | 1.90 | 1.64 | 94 | 3.60 | 3.37 | 2.77 | 2.52 |
| 35 | 2.53 | 2.31 | 1.91 | 1.66 | 95 | 3.62 | 3.38 | 2.79 | 2.53 |
| 36 | 2.55 | 2.33 | 1.93 | 1.67 | 96 | 3.62 | 3.40 | 2.81 | 2.54 |
| 37 | 2.58 | 2.35 | 1.94 | 1.67 | 97 | 3.64 | 3.41 | 2.83 | 2.56 |
| 38 | 2.60 | 2.38 | 1.96 | 1.69 | 98 | 3.66 | 3.43 | 2.84 | 2.58 |
| 39 | 2.63 | 2.40 | 1.98 | 1.71 | 99 | 3.68 | 3.44 | 2.86 | 2.59 |
| 40 | 2.65 | 2.42 | 1.98 | 1.72 | 100 | 3.69 | 3.46 | 2.87 | 2.61 |
| 41 | 2.67 | 2.44 | 2.00 | 1.73 | 101 | 3.71 | 3.48 | 2.89 | 2.63 |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 42 | 2.70 | 2.46 | 2.01 | 1.75 | 102 | 3.73 | 3.50 | 2.90 | 2.65 |
| 43 | 2.71 | 2.49 | 2.03 | 1.77 | 103 | 3.74 | 3.51 | 2.92 | 2.65 |
| 44 | 2.74 | 2.51 | 2.04 | 1.78 | 104 | 3.75 | 3.52 | 2.94 | 2.67 |
| 45 | 2.76 | 2.53 | 2.06 | 1.79 | 105 | 3.77 | 3.54 | 2.95 | 2.69 |
| 46 | 2.78 | 2.55 | 2.07 | 1.80 | 106 | 3.79 | 3.56 | 2.97 | 2.71 |
| 47 | 2.80 | 2.57 | 2.09 | 1.82 | 107 | 3.80 | 3.57 | 2.98 | 2.72 |
| 48 | 2.83 | 2.59 | 2.10 | 1.83 | 108 | 3.82 | 3.59 | 3.00 | 2.74 |
| 49 | 2.84 | 2.62 | 2.11 | 1.85 | 109 | 3.83 | 3.61 | 3.01 | 2.75 |
| 50 | 2.86 | 2.64 | 2.11 | 1.86 | 110 | 3.85 | 3.62 | 3.03 | 2.76 |
| 51 | 2.88 | 2.65 | 2.13 | 1.87 | 111 | 3.86 | 3.63 | 3.05 | 2.78 |
| 52 | 2.90 | 2.67 | 2.14 | 1.88 | 112 | 3.88 | 3.65 | 3.07 | 2.80 |
| 53 | 2.92 | 2.70 | 2.16 | 1.89 | 113 | 3.90 | 3.67 | 3.08 | 2.82 |
| 54 | 2.95 | 2.71 | 2.16 | 1.90 | 114 | 3.92 | 3.68 | 3.09 | 2.83 |
| 55 | 2.96 | 2.73 | 2.18 | 1.91 | 115 | 3.93 | 3.70 | 3.11 | 2.85 |
| 56 | 2.98 | 2.75 | 2.20 | 1.93 | 116 | 3.94 | 3.72 | 3.13 | 2.86 |
| 57 | 3.00 | 2.76 | 2.21 | 1.94 | 117 | 3.96 | 3.73 | 3.14 | 2.88 |
| 58 | 3.01 | 2.79 | 2.21 | 1.96 | 118 | 3.98 | 3.74 | 3.16 | 2.89 |
| 59 | 3.04 | 2.81 | 2.22 | 1.97 | 119 | 3.99 | 3.76 | 3.18 | 2.91 |
| 60 | 3.06 | 2.83 | 2.23 | 1.98 | 120 | 4.01 | 3.78 | 3.19 | 2.93 |

**ALTERNATIVE 1**

Exhibit 22-5

**Credit Disability Insurance - Recommended Presumptive Premium Rates**
**All Classes Except Class E**

| Plan | Plan Description | Rate |
|---|---|---|
| 10 | Single Premium 14-day Retroactive | Multiply rate from Exhibit 22-6 times Discount Factor* |
| 11 | Single Premium 30-day Retroactive | Multiply rate from Exhibit 22-6 times Discount Factor* |
| 12 | Single Premium 14-day Non-Retroactive | Multiply rate from Exhibit 22-6 times Discount Factor* |
| 13 | Single Premium 30-day Non-Retroactive | Multiply rate from Exhibit 22-6 times Discount Factor* |
| 14 | Single Premium 90-day Non-Retroactive | $0.16 per year per $100 initial indebtedness times Discount Factor* |
| 16 | Outstanding Balance Revolving 14-day Retroactive | $1.82 per month per $1000 of outstanding insured indebtedness |
| 17 | Outstanding Balance Revolving 30-day Retroactive | $1.35 per month per $1000 of outstanding insured indebtedness |
| 18 | Outstanding Balance Revolving 14-day Non-Retroactive | $1.58 per month per $1000 of outstanding insured indebtedness |
| 19 | Outstanding Balance Revolving 30-day Non-Retroactive | $1.18 per month per $1000 of outstanding insured indebtedness |
| 22 | Outstanding Balance Other 14-day Retroactive | Multiply applicable Exhibit 22-6 rate by Conversion Formula** |
| 23 | Outstanding Balance Other 30-day Retroactive | Multiply applicable Exhibit 22-6 rate by Conversion Formula** |
| 24 | Outstanding Balance Other 14-day Non-Retroactive | Multiply applicable Exhibit 22-6 rate by Conversion Formula** |
| 25 | Outstanding Balance Other 30-day Non-Retroactive | Multiply applicable Exhibit 22-6 rate by Conversion Formula** |
| 26 | Outstanding Balance Other 90-day Non-Retroactive | Multiply Plan 14 SP without discount by Conversion Formula** |

*Single premium rates for plans 10 through 14 must be multiplied by the discount factor which is restated as follows:

Discount Factor (1/(1 + ((i X n)/24)))

Where n = term of insurance coverage in months and i = .035 interest rate

** Conversion Formula is as follows:

20/(n + 1)

Where n = the term of the insurance coverage in months.

Coverage cannot be less than 6 months.

**ALTERNATIVE 1**

Exhibit 22-6

**Credit Disability Insurance - Recommended Presumptive Premium Rates Per $100 of Initial Indebtedness**
**All Classes Except Class E**

| Original Number of Equal Monthly Installments | Benefits Payable After: 14th Day of Disability | | 30th Day of Disability | | Original Number of Equal Monthly Installments | Benefits Payable After: 14th Day of Disability | | 30th Day of Disability | |
|---|---|---|---|---|---|---|---|---|---|
| | Retro | Non-Retro | Retro | Non-Retro | | Retro | Non-Retro | Retro | Non-Retro |
| | | | | | 61 | 4.04 | 3.74 | 2.97 | 2.62 |
| | | | | | 62 | 4.07 | 3.76 | 2.99 | 2.64 |
| 3 | 0.95 | 0.74 | | | 63 | 4.09 | 3.79 | 3.00 | 2.67 |
| 4 | 1.28 | 0.98 | | | 64 | 4.11 | 3.81 | 3.03 | 2.69 |
| 5 | 1.59 | 1.22 | | | 65 | 4.13 | 3.82 | 3.05 | 2.70 |
| 6 | 1.82 | 1.46 | 1.33 | 0.82 | 66 | 4.15 | 3.85 | 3.08 | 2.73 |
| 7 | 1.93 | 1.64 | 1.45 | 0.94 | 67 | 4.17 | 3.87 | 3.09 | 2.75 |
| 8 | 2.04 | 1.74 | 1.56 | 1.04 | 68 | 4.20 | 3.89 | 3.11 | 2.76 |
| 9 | 2.12 | 1.82 | 1.65 | 1.13 | 69 | 4.21 | 3.91 | 3.14 | 2.79 |
| 10 | 2.21 | 1.91 | 1.75 | 1.22 | 70 | 4.24 | 3.93 | 3.16 | 2.81 |
| 11 | 2.28 | 1.98 | 1.81 | 1.30 | 71 | 4.26 | 3.96 | 3.17 | 2.84 |
| 12 | 2.34 | 2.04 | 1.87 | 1.36 | 72 | 4.28 | 3.97 | 3.20 | 2.85 |
| 13 | 2.40 | 2.11 | 1.91 | 1.42 | 73 | 4.30 | 3.99 | 3.22 | 2.87 |
| 14 | 2.46 | 2.17 | 1.95 | 1.50 | 74 | 4.32 | 4.02 | 3.25 | 2.90 |
| 15 | 2.52 | 2.23 | 1.99 | 1.56 | 75 | 4.34 | 4.04 | 3.26 | 2.92 |
| 16 | 2.58 | 2.28 | 2.03 | 1.60 | 76 | 4.37 | 4.05 | 3.28 | 2.93 |
| 17 | 2.63 | 2.34 | 2.06 | 1.67 | 77 | 4.38 | 4.08 | 3.31 | 2.96 |
| 18 | 2.69 | 2.38 | 2.10 | 1.73 | 78 | 4.40 | 4.10 | 3.33 | 2.98 |
| 19 | 2.73 | 2.44 | 2.12 | 1.76 | 79 | 4.43 | 4.13 | 3.34 | 3.00 |
| 20 | 2.78 | 2.47 | 2.16 | 1.81 | 80 | 4.45 | 4.14 | 3.37 | 3.02 |
| 21 | 2.82 | 2.52 | 2.20 | 1.85 | 81 | 4.46 | 4.16 | 3.39 | 3.04 |
| 22 | 2.86 | 2.56 | 2.21 | 1.87 | 82 | 4.49 | 4.19 | 3.40 | 3.06 |
| 23 | 2.91 | 2.61 | 2.24 | 1.89 | 83 | 4.51 | 4.21 | 3.43 | 3.09 |
| 24 | 2.94 | 2.64 | 2.27 | 1.92 | 84 | 4.52 | 4.22 | 3.45 | 3.10 |
| 25 | 2.99 | 2.69 | 2.28 | 1.94 | 85 | 4.55 | 4.25 | 3.48 | 3.13 |
| 26 | 3.02 | 2.73 | 2.33 | 1.98 | 86 | 4.57 | 4.27 | 3.49 | 3.15 |
| 27 | 3.06 | 2.76 | 2.35 | 2.00 | 87 | 4.60 | 4.28 | 3.51 | 3.16 |
| 28 | 3.09 | 2.80 | 2.36 | 2.03 | 88 | 4.61 | 4.31 | 3.54 | 3.19 |
| 29 | 3.14 | 2.84 | 2.39 | 2.04 | 89 | 4.63 | 4.33 | 3.56 | 3.21 |
| 30 | 3.16 | 2.87 | 2.41 | 2.06 | 90 | 4.66 | 4.36 | 3.57 | 3.23 |
| 31 | 3.21 | 2.91 | 2.44 | 2.09 | 91 | 4.68 | 4.37 | 3.60 | 3.25 |
| 32 | 3.25 | 2.93 | 2.45 | 2.11 | 92 | 4.69 | 4.39 | 3.62 | 3.27 |
| 33 | 3.27 | 2.97 | 2.47 | 2.12 | 93 | 4.72 | 4.42 | 3.64 | 3.29 |
| 34 | 3.31 | 3.00 | 2.51 | 2.16 | 94 | 4.74 | 4.44 | 3.66 | 3.32 |
| 35 | 3.33 | 3.04 | 2.52 | 2.18 | 95 | 4.77 | 4.45 | 3.68 | 3.33 |
| 36 | 3.37 | 3.08 | 2.55 | 2.21 | 96 | 4.78 | 4.48 | 3.70 | 3.35 |
| 37 | 3.40 | 3.10 | 2.56 | 2.21 | 97 | 4.80 | 4.50 | 3.73 | 3.38 |
| 38 | 3.43 | 3.14 | 2.58 | 2.23 | 98 | 4.83 | 4.52 | 3.74 | 3.40 |
| 39 | 3.46 | 3.16 | 2.61 | 2.26 | 99 | 4.85 | 4.54 | 3.76 | 3.41 |
| 40 | 3.49 | 3.19 | 2.61 | 2.27 | 100 | 4.86 | 4.56 | 3.79 | 3.44 |
| 41 | 3.52 | 3.22 | 2.63 | 2.28 | 101 | 4.89 | 4.59 | 3.81 | 3.46 |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 42 | 3.56 | 3.25 | 2.65 | 2.30 | 102 | 4.91 | 4.61 | 3.82 | 3.49 |
| 43 | 3.57 | 3.28 | 2.68 | 2.33 | 103 | 4.93 | 4.62 | 3.85 | 3.50 |
| 44 | 3.61 | 3.31 | 2.69 | 2.35 | 104 | 4.95 | 4.65 | 3.87 | 3.52 |
| 45 | 3.64 | 3.33 | 2.71 | 2.36 | 105 | 4.97 | 4.67 | 3.89 | 3.55 |
| 46 | 3.67 | 3.37 | 2.73 | 2.38 | 106 | 5.00 | 4.69 | 3.91 | 3.57 |
| 47 | 3.69 | 3.39 | 2.75 | 2.40 | 107 | 5.01 | 4.71 | 3.93 | 3.58 |
| 48 | 3.73 | 3.41 | 2.76 | 2.41 | 108 | 5.03 | 4.73 | 3.96 | 3.61 |
| 49 | 3.74 | 3.45 | 2.78 | 2.44 | 109 | 5.06 | 4.75 | 3.97 | 3.63 |
| 50 | 3.78 | 3.48 | 2.79 | 2.45 | 110 | 5.08 | 4.77 | 3.99 | 3.64 |
| 51 | 3.80 | 3.50 | 2.81 | 2.46 | 111 | 5.09 | 4.79 | 4.02 | 3.67 |
| 52 | 3.82 | 3.52 | 2.82 | 2.47 | 112 | 5.12 | 4.81 | 4.04 | 3.69 |
| 53 | 3.85 | 3.56 | 2.85 | 2.50 | 113 | 5.14 | 4.84 | 4.05 | 3.72 |
| 54 | 3.89 | 3.57 | 2.85 | 2.51 | 114 | 5.16 | 4.85 | 4.08 | 3.73 |
| 55 | 3.90 | 3.60 | 2.87 | 2.52 | 115 | 5.18 | 4.87 | 4.10 | 3.75 |
| 56 | 3.93 | 3.63 | 2.90 | 2.55 | 116 | 5.20 | 4.90 | 4.13 | 3.78 |
| 57 | 3.96 | 3.64 | 2.91 | 2.56 | 117 | 5.22 | 4.92 | 4.14 | 3.80 |
| 58 | 3.97 | 3.68 | 2.92 | 2.58 | 118 | 5.25 | 4.93 | 4.16 | 3.81 |
| 59 | 4.01 | 3.70 | 2.93 | 2.59 | 119 | 5.26 | 4.96 | 4.19 | 3.84 |
| 60 | 4.03 | 3.73 | 2.94 | 2.61 | 120 | 5.28 | 4.98 | 4.21 | 3.86 |

Figure 2: 28 TAC §3.5206

**ALTERNATIVE 2**

**Assumes combined presumptive premium rates for all classes**

**Credit Life Insurance - Recommended Presumptive Premium Rates**
**All Classes**

| Plan | Plan Description | | Rate | |
|---|---|---|---|---|
| 1 | Single Premium, Reducing Coverage, Single Life | * | $0.275 | per year per $100 initial insured indebtedness |
| 2 | Single Premium, Level Coverage, Single Life | * | $0.528 | per year per $100 insured indebtedness |
| 3 | Outstanding Balance, Revolving Loan, Single Life | | $0.440 | per month per $1000 outstanding insured indebtedness |
| 4 | Outstanding Balance, Other, Single Life | | $0.440 | per month per $1000 outstanding insured indebtedness |
| 5 | Single Premium, Reducing Coverage, Joint Life | * | $0.412 | per year per $100 initial insured indebtedness |
| 6 | Single Premium, Level Coverage, Joint Life | * | $0.792 | per year per $100 insured indebtedness |
| 7 | Outstanding Balance, Revolving Loan, Joint Life | | $0.660 | per month per $1000 outstanding insured indebtedness |
| 8 | Outstanding Balance, Other, Joint Life | | $0.660 | per month per $1000 outstanding insured indebtedness |

* Single premium rates for plans 1, 2, 5, and 6 must be multiplied by the discount factor which is restated as follows:

Discount Factor (1/(1 + ((i X n)/24)))

Where n = term of insurance coverage in months and i = .035 interest rate

**ALTERNATIVE 2**

Exhibit 22-1

**Credit Disability Insurance - Recommended Presumptive Premium Rates**
**All Classes**

| Plan | Plan Description | Rate |
|---|---|---|
| 10 | Single Premium 14-day Retroactive | Multiply rate from Exhibit 22-2 times Discount Factor * |
| 11 | Single Premium 30-day Retroactive | Multiply rate from Exhibit 22-2 times Discount Factor * |
| 12 | Single Premium 14-day Non-Retroactive | Multiply rate from Exhibit 22-2 times Discount Factor * |
| 13 | Single Premium 30-day Non-Retroactive | Multiply rate from Exhibit 22-2 times Discount Factor * |
| 14 | Single Premium 90-day Non-Retroactive | $0.13 per year per $100 initial indebtedness times Discount Factor* |
| 16 | Outstanding Balance Revolving 14-day Retroactive | $1.76 per month per $1000 of outstanding insured indebtedness |
| 17 | Outstanding Balance Revolving 30-day Retroactive | $1.30 per month per $1000 of outstanding insured indebtedness |
| 18 | Outstanding Balance Revolving 14-day Non-Retroactive | $1.53 per month per $1000 of outstanding insured indebtedness |
| 19 | Outstanding Balance Revolving 30-day Non-Retroactive | $1.14 per month per $1000 of outstanding insured indebtedness |
| 22 | Outstanding Balance Other 14-day Retroactive | Multiply applicable Exhibit 22-2 rate by Conversion Formula ** |
| 23 | Outstanding Balance Other 30-day Retroactive | Multiply applicable Exhibit 22-2 rate by Conversion Formula ** |
| 24 | Outstanding Balance Other 14-day Non-Retroactive | Multiply applicable Exhibit 22-2 rate by Conversion Formula ** |
| 25 | Outstanding Balance Other 30-day Non-Retroactive | Multiply applicable Exhibit 22-2 rate by Conversion Formula ** |
| 26 | Outstanding Balance Other 90-day Non-Retroactive | Multiply Plan 14 SP without discount by Conversion Formula** |

*Single premium rates for plans 10 through 14 must be multiplied by the discount factor which is restated as follows:

Discount Factor $(1/(1 + ((i \times n)/24)))$

Where n = term of insurance coverage in months and i = .035 interest rate

**Conversion Formula is as follows:

$20/(n+1)$

Where n = the term of the insurance coverage in months.

Coverage cannot be less than 6 months

**ALTERNATIVE 2**

Exhibit 22-2

**Credit Disability Insurance - Recommended Presumptive Premium Rates Per $100 of Initial Indebtedness**
**All Classes**

| Original Number of Equal Monthly Installments | Benefits Payable After: 14th Day of Disability | | 30th Day of Disability | | Original Number of Equal Monthly Installments | Benefits Payable After: 14th Day of Disability | | 30th Day of Disability | |
|---|---|---|---|---|---|---|---|---|---|
| | Retro | Non-Retro | Retro | Non-Retro | | Retro | Non-Retro | Retro | Non-Retro |
| | | | | | 61 | 3.35 | 3.10 | 2.46 | 2.17 |
| | | | | | 62 | 3.37 | 3.12 | 2.48 | 2.19 |
| 3 | 0.79 | 0.61 | | | 63 | 3.39 | 3.14 | 2.49 | 2.21 |
| 4 | 1.06 | 0.81 | | | 64 | 3.41 | 3.16 | 2.51 | 2.23 |
| 5 | 1.32 | 1.01 | | | 65 | 3.42 | 3.17 | 2.53 | 2.24 |
| 6 | 1.51 | 1.21 | 1.10 | 0.68 | 66 | 3.44 | 3.19 | 2.55 | 2.26 |
| 7 | 1.60 | 1.36 | 1.20 | 0.78 | 67 | 3.46 | 3.21 | 2.56 | 2.28 |
| 8 | 1.69 | 1.44 | 1.29 | 0.86 | 68 | 3.48 | 3.22 | 2.58 | 2.29 |
| 9 | 1.76 | 1.51 | 1.37 | 0.94 | 69 | 3.49 | 3.24 | 2.60 | 2.31 |
| 10 | 1.83 | 1.58 | 1.45 | 1.01 | 70 | 3.51 | 3.26 | 2.62 | 2.33 |
| 11 | 1.89 | 1.64 | 1.50 | 1.08 | 71 | 3.53 | 3.28 | 2.63 | 2.35 |
| 12 | 1.94 | 1.69 | 1.55 | 1.13 | 72 | 3.55 | 3.29 | 2.65 | 2.36 |
| 13 | 1.99 | 1.75 | 1.58 | 1.18 | 73 | 3.56 | 3.31 | 2.67 | 2.38 |
| 14 | 2.52 | 1.80 | 1.62 | 1.24 | 74 | 3.58 | 3.33 | 2.69 | 2.40 |
| 15 | 2.09 | 1.85 | 1.65 | 1.29 | 75 | 3.60 | 3.35 | 2.70 | 2.42 |
| 16 | 2.69 | 1.89 | 1.68 | 1.33 | 76 | 3.62 | 3.36 | 2.72 | 2.43 |
| 17 | 2.18 | 1.94 | 1.71 | 1.38 | 77 | 3.63 | 3.38 | 2.74 | 2.45 |
| 18 | 2.23 | 1.97 | 1.74 | 1.43 | 78 | 3.65 | 3.40 | 2.76 | 2.47 |
| 19 | 2.26 | 2.02 | 1.76 | 1.46 | 79 | 3.67 | 3.42 | 2.77 | 2.49 |
| 20 | 2.30 | 2.05 | 1.79 | 1.50 | 80 | 3.69 | 3.43 | 2.79 | 2.50 |
| 21 | 2.34 | 2.09 | 1.82 | 1.53 | 81 | 3.70 | 3.45 | 2.81 | 2.52 |
| 22 | 2.37 | 2.12 | 1.83 | 1.55 | 82 | 3.72 | 3.47 | 2.82 | 2.54 |
| 23 | 2.41 | 2.16 | 1.86 | 1.57 | 83 | 3.74 | 3.49 | 2.84 | 2.56 |
| 24 | 2.44 | 2.19 | 1.88 | 1.59 | 84 | 3.75 | 3.50 | 2.86 | 2.57 |
| 25 | 2.48 | 2.23 | 1.89 | 1.61 | 85 | 3.77 | 3.52 | 2.88 | 2.59 |
| 26 | 2.50 | 2.26 | 1.93 | 1.64 | 86 | 3.79 | 3.54 | 2.89 | 2.61 |
| 27 | 2.54 | 2.29 | 1.95 | 1.66 | 87 | 3.81 | 3.55 | 2.91 | 2.62 |
| 28 | 2.56 | 2.32 | 1.96 | 1.68 | 88 | 3.82 | 3.57 | 2.93 | 2.64 |
| 29 | 2.60 | 2.35 | 1.98 | 1.69 | 89 | 3.84 | 3.59 | 2.95 | 2.66 |
| 30 | 2.62 | 2.38 | 2.00 | 1.71 | 90 | 3.86 | 3.61 | 2.96 | 2.68 |
| 31 | 2.66 | 2.41 | 2.02 | 1.73 | 91 | 3.88 | 3.62 | 2.98 | 2.69 |
| 32 | 2.69 | 2.43 | 2.03 | 1.75 | 92 | 3.89 | 3.64 | 3.00 | 2.71 |
| 33 | 2.71 | 2.46 | 2.05 | 1.76 | 93 | 3.91 | 3.66 | 3.02 | 2.73 |
| 34 | 2.74 | 2.49 | 2.08 | 1.79 | 94 | 3.93 | 3.68 | 3.03 | 2.75 |
| 35 | 2.76 | 2.52 | 2.09 | 1.81 | 95 | 3.95 | 3.69 | 3.05 | 2.76 |
| 36 | 2.79 | 2.55 | 2.11 | 1.83 | 96 | 3.96 | 3.71 | 3.07 | 2.78 |
| 37 | 2.82 | 2.57 | 2.12 | 1.83 | 97 | 3.98 | 3.73 | 3.09 | 2.80 |
| 38 | 2.84 | 2.60 | 2.14 | 1.85 | 98 | 4.00 | 3.75 | 3.10 | 2.82 |
| 39 | 2.87 | 2.62 | 2.16 | 1.87 | 99 | 4.02 | 3.76 | 3.12 | 2.83 |
| 40 | 2.89 | 2.64 | 2.16 | 1.88 | 100 | 4.03 | 3.78 | 3.14 | 2.85 |
| 41 | 2.92 | 2.67 | 2.18 | 1.89 | 101 | 4.05 | 3.80 | 3.16 | 2.87 |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 42 | 2.95 | 2.69 | 2.20 | 1.91 | 102 | 4.07 | 3.82 | 3.17 | 2.89 |
| 43 | 2.96 | 2.72 | 2.22 | 1.93 | 103 | 4.09 | 3.83 | 3.19 | 2.90 |
| 44 | 2.99 | 2.74 | 2.23 | 1.95 | 104 | 4.10 | 3.85 | 3.21 | 2.92 |
| 45 | 3.02 | 2.76 | 2.25 | 1.96 | 105 | 4.12 | 3.87 | 3.22 | 2.94 |
| 46 | 3.04 | 2.79 | 2.26 | 1.97 | 106 | 4.14 | 3.89 | 3.24 | 2.96 |
| 47 | 3.06 | 2.81 | 2.28 | 1.99 | 107 | 4.15 | 3.90 | 3.26 | 2.97 |
| 48 | 3.09 | 2.83 | 2.29 | 2.00 | 108 | 4.17 | 3.92 | 3.28 | 2.99 |
| 49 | 3.10 | 2.86 | 2.30 | 2.02 | 109 | 4.19 | 3.94 | 3.29 | 3.01 |
| 50 | 3.13 | 2.88 | 2.31 | 2.03 | 110 | 4.21 | 3.95 | 3.31 | 3.02 |
| 51 | 3.15 | 2.90 | 2.33 | 2.04 | 111 | 4.22 | 3.97 | 3.33 | 3.04 |
| 52 | 3.17 | 2.92 | 2.34 | 2.05 | 112 | 4.24 | 3.99 | 3.35 | 3.06 |
| 53 | 3.19 | 2.95 | 2.36 | 2.07 | 113 | 4.26 | 4.01 | 3.36 | 3.08 |
| 54 | 3.22 | 2.96 | 2.36 | 2.08 | 114 | 4.28 | 4.02 | 3.38 | 3.09 |
| 55 | 3.23 | 2.98 | 2.38 | 2.09 | 115 | 4.29 | 4.04 | 3.40 | 3.11 |
| 56 | 3.26 | 3.01 | 2.40 | 2.11 | 116 | 4.31 | 4.06 | 3.42 | 3.13 |
| 57 | 3.28 | 3.02 | 2.41 | 2.12 | 117 | 4.33 | 4.08 | 3.43 | 3.15 |
| 58 | 3.29 | 3.05 | 2.42 | 2.14 | 118 | 4.35 | 4.09 | 3.45 | 3.16 |
| 59 | 3.32 | 3.07 | 2.43 | 2.15 | 119 | 4.36 | 4.11 | 3.47 | 3.18 |
| 60 | 3.34 | 3.09 | 2.44 | 2.16 | 120 | 4.38 | 4.13 | 3.49 | 3.20 |

Figure: 28 TAC §3.5603

Credibility Table

**AVERAGE NUMBER OF LIFE YEARS**

| CREDIT LIFE | 7 DAY | 14 DAY | 30 DAY | 90 DAY | INCURRED CLAIM COUNT | CREDIBILITY FACTOR Z |
|---|---|---|---|---|---|---|
| 1 | 1 | 1 | 1 | 1 | 1 | .00 |
| 1,800 | 95 | 141 | 209 | 327 | 9 | .25 |
| 2,400 | 126 | 188 | 279 | 429 | 12 | .30 |
| 3,000 | 158 | 234 | 349 | 536 | 15 | .35 |
| 3,600 | 189 | 281 | 419 | 643 | 18 | .40 |
| 4,600 | 242 | 359 | 535 | 821 | 23 | .45 |
| 5,600 | 295 | 438 | 651 | 1,000 | 28 | .50 |
| 6,600 | 347 | 516 | 767 | 1,179 | 33 | .55 |
| 7,600 | 400 | 594 | 884 | 1,357 | 38 | .60 |
| 9,600 | 505 | 750 | 1,116 | 1,714 | 48 | .65 |
| 11,600 | 611 | 906 | 1,349 | 2,071 | 58 | .70 |
| 14,600 | 768 | 1,141 | 1,698 | 2,607 | 73 | .75 |
| 17,600 | 926 | 1,375 | 2,047 | 3,143 | 88 | .80 |
| 20,600 | 1,084 | 1,609 | 2,395 | 3,679 | 108 | .85 |
| 25,600 | 1,347 | 2,000 | 2,977 | 4,571 | 128 | .90 |
| 30,600 | 1,611 | 2,391 | 3,558 | 5,464 | 153 | .95 |
| 40,000 | 2,106 | 3,125 | 4,651 | 7,143 | 200 | 1.00 |

# 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

Request for Proposals: Texas Yes! Hometown STARS Matching Fund Program

The Marketing and Promotion Division of the Texas Department of Agriculture (the department) hereby requests proposals for the Texas Yes! matching fund program projects for the period of November 1, 2004, through August 31, 2005. The Texas Yes! Hometown STARS matching fund program is a matching funds reimbursement program designed to directly promote tourism in rural Texas by developing promotional campaigns based on project requests submitted by successful applicants. Program and project proposal application information can be obtained at: www.texasyes.org or by contacting the Funding Coordinator at (512) 463-7731 or (866) 4TEX-YES

**Eligibility.** To be eligible for participation in the matching funds program, an applicant must be a Texas Yes! Community Member who is a city or county, and is in good standing with the Texas Department of Agriculture. A Texas Yes! Community Member who is a city or county can submit a proposal on behalf of an event, festival or fair. The community member will be responsible for providing the sales tax information, other economic impact information, and any additional documentation or information requested by the department to indicate the impact of the project on the community or region. The department has the sole discretion to determine whether a project meets program eligibility requirements.

**Proposal Requirements.** To apply for Texas Yes! Hometown STARS matching funds a community member who is a city or county must: (i) prepare and submit a project request in accordance with this RFP; (ii) submit a sworn affidavit disclosing any existing or potential conflict of interest related to the evaluation of the project plan by Texas Yes! Hometown STARS; and (iii) acknowledge that the applicant will notify the department of any change in the status of the project. The deadline for submission of project requests is November 23, 2004. The department will only consider the first fifteen applications that it receives.

Each project proposal must use the Texas Yes! Hometown STARS project proposal form, located on the Texas Yes! Web site at www.texasyes.org. Each project request submitted by an eligible applicant must describe the advertising or other market- oriented promotional activities to be carried out using matching funds and must include a cover page including the name, title and address of applicant and agent; a detailed specific narrative that contains a brief description of the community or city, a brief description of the tourism event that will be promoted, dates and location of the tourism event, why the applicant wants to promote the event, how the matching funds will be used to promote the tourism event, how will Texas Yes! Hometown STARS matching funds improve the event, how will the Texas Yes! program be promoted as part of the promotional campaign, how will the applicant work with other entities to promote the event, what impact is expected from the event and how the applicant will collect the necessary data to measure the impact of the promotion; a detailed budget/activity request; a signed original Resolution Authorizing Application from the governing body of the applicant; a signed original Reimbursement Guidelines document and a signed original Acknowledgement. Please send one original for initial review by the Funding Coordinator and then follow up with 16 additional copies, when requested by the Funding Coordinator that will be distributed to the Review Committee.

All approved projects must not begin until January 21, 2005 and must be completed by August 31, 2005, or the date specified in the project contract, whichever is earlier. All purchasing of approved budget items and the actual events must occur within the contract period. All approved projects will be subject to audit and periodic reporting requirements.

**Proposals should be submitted to:** Debbie Wall, Funding Coordinator, Texas Department of Agriculture, 1700 North Congress Avenue, 11th Floor, Austin, Texas 78701. Ms. Wall may be contacted by telephone at (512) 463-7731, by fax at (512) 936- 4469 or e-mail at debbie.wall@agr.state.tx.us for additional information about preparing the proposal.

All qualifying proposals will be evaluated by the Texas Yes! Hometown STARS Review Team who are appointed by the Commissioner of Agriculture. The Texas Yes! Hometown STARS Review Team are representatives from the following areas: media, print, travel industry, art, agricultural tourism, rural economic development, historical preservation, cultural diversity, entertainment industry, GO TEXAN Partner Program and awarded Texas Yes! communities. Proposals will be selected for reimbursement funding on a competitive basis. The proposals will be rated in ten general categories by the Texas Yes! Hometown STARS Review Team. The ten categories are as follows: (i) the proposal displays a well planned vision for the tourism event promotion; (ii) the proposal presents concrete goals for this project; (iii) the proposal is unique and innovative; (iv) the anticipated results indicate a good return on investment; (v) the proposal includes efforts to effectively utilize regional resources; (vi) the event offers good potential to draw new and returning visitors from outside the area; (vii) the promotion will further enhance the Texas Yes! program with a high level of visibility for Texas Yes! (viii) the proposed budget is appropriate and well developed; (ix) the proposal includes a well conceived and tangible plan for impact measurement; and (x) based on the information in the proposal, the promoted event appears to have a high probability for success with room to expand and grow. The Texas Department of Agriculture's Texas Yes! Hometown STARS Review Committee will base its award decisions on the Texas Yes! Hometown STARS -Review Team's recommendations and each applicant's overall score. **The factors that the department will consider when evaluating each application are subject to change, without notice, at the discretion of the department.**

Only project requests that further or enhance the department's Texas Yes! Program and are submitted by applicants physically located in Texas will be funded. The department reserves the right to terminate any award if it determines, in its sole discretion, that a project does not further or enhance the goals of the Texas Yes! Program. The announcement of the grant awards will be made by the Marketing Coordinator for Texas Yes! after the first fifteen applications received by the department have been fully considered.

TRD-200406602

Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: November 3, 2004

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## Office of the Attorney General

### Access and Visitation Grant Request for Applications

Under 42 U.S.C. 669b the Federal Government provides to states grants for Access and Visitation programs. These grants may be used to establish and administer programs to support and facilitate noncustodial parents' access to and visitation with their children. Eligible activities include: mediation, counseling, education, development of parenting plans, visitation enforcement, and development of guidelines for visitation and alternative custody arrangements. Projects funded under this program do not have to run on a statewide basis. Entities eligible for funding include: courts, local public entities, private nonprofit organizations, and private for-profit agencies with a minimum of two years operating history. Matching funds (cash or in-kind) of at least 10% are required. **Preference will be given to those proposals emphasizing early intervention, co-parenting education, alternative dispute resolution services, and visitation enforcement programs for parents with cases in the IV-D child support program.**

In addition, the Office of the Attorney General is inviting proposals for one project to provide a statewide, toll-free, telephone hotline providing legal information regarding access and visitation, custody, paternity establishment, and child support as well as, legal resources for parents, and a website with shared parenting information and legal resources. Applicants proposing to provide hotline services will need to demonstrate the ability to: provide brief legal services to approximately 1200 parent calls per month, provide paper and electronic copies of legal resources to callers, host an internet website that provides parents with comprehensive access, visitation, custody, paternity and child support information, provide accurate and appropriate referrals to local providers of access and visitation, mediation, and legal services, and adequately track customer satisfaction with hotline and web-based services.

**2005 Special Funding Term**

**2005 grant funds will run for a nine month period - January 1, 2005 to September 30, 2005. Grantees successfully performing program services may be eligible for an extension of funding through Federal Fiscal Year 2006 based on availability of funds. It is expected that approximately 10 grants ranging from $22,500 to $90,000 (for the 9 month period - annualized grant amount is $30,000 to $120,000) will be awarded.**

Written requests for application packets must be sent by: regular mail, express service (Non-U.S. Postal Service), Fax, or email to: Arlene Pace, Office of the Attorney General Child Support Division, (physical address) 5500 Oltorf Street, Austin, Texas 78711-2017, or (mailing address) P.O. Box 12017, Austin, Texas 78711-2017 Mail Code 047, Fax (512) 460-6618 arlenepace@cs.oag.state.tx.us.

**The application deadline for submission is 5:00 p.m. CDST, on December 6, 2004.** Applications received after the deadline will be considered non-compliant and will not be considered. Please mail applications to Arlene Pace, Office of the Attorney General Child Support Division, (physical address) 5500 Oltorf Street, Austin, Texas 78711-2017, or (mailing address) P.O. Box 12017, Austin, Texas 78711-2017 Mail Code 047.

Questions regarding this application process may be directed, in writing, to: Michael Hayes, Office of the Attorney General, MC 039, P.O. Box 12017, Austin, Texas 78711-2017, Fax (512) 460-6070 michael.hayes@cs.oag.state.tx.us.

Answers to questions received before November 22, 2004 will be posted on the OAG website with the application packet.

Written requests for application packets must be sent by: regular mail, express service (Non-U.S. Postal Service), Fax, or email to: Arlene Pace, Office of the Attorney General Child Support Division, (physical address) 5500 Oltorf Street, Austin, Texas 78711-2017, or (mailing address) P.O. Box 12017, Austin, Texas 78711-2017 Mail Code 047, Fax (512) 460-6618, arlenepace@cs.oag.state.tx.us.

*For information regarding this publication you may contact A.G. Younger, Agency Liaison, at (512) 463-2110.*

TRD-200406712
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: November 8, 2004

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## Texas Building and Procurement Commission

### Invitation for Bid Notice

TBPC Project 04-004-0551

Project Name: REPAIR EXPORT PEN FACILITY, BROWNSVILLE-SOUTH PADRE ISLAND INTERNATIONAL AIRPORT, 414 S. MINNESOTA AVE., BROWNSVILLE, TEXAS for the TEXAS DEPARTMENT OF AGRICULTURE

Sealed Bids for this project will be received until **1:00 P.M., December 3, 2004, at the Site,** TDA Export Pens, Brownsville-South Padre Island International Airport, 414 S. Minnesota Ave., Brownsville, Texas 78520. See the IFB for other delivery choices.

Plans and specifications may be obtained from the Joshua Engineering Group, Inc., 2161 NW Military Highway, Suite 103, San Antonio, Texas 78213, Phone: (210) 340-2322, Fax: (210) 340-1268, Attention: Steve Huck, PE, for a deposit of $25.00, refundable upon return of a complete, unmarked set(s).

A pre-bid conference is scheduled for 10:00 AM, November 15, 2004. Attendance at the pre-bid conference is *highly recommended*. Location of the pre-bid conference is the TDA Export Pens, Brownsville-South Padre Island International Airport, 414 S. Minnesota Ave., Brownsville, TX 78520. Telephone number at the office is (956) 546-5135.

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=56342

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-200406611
Cynthia de Roch
General Counsel
Texas Building and Procurement Commission
Filed: November 4, 2004

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## Coastal Coordination Council

### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of October 28, 2004, through November 4, 2004. The public comment period for these projects will close at 5:00 p.m. on December 10, 2004.

FEDERAL AGENCY ACTIONS:

**Applicant: Union Pacific Railroad**; Location: The project is located on Bridge 149.8, Brownsville Subdivision, northwest of Corpus Christi, at Nueces River mile 4.9, Nueces and San Patricio Counties, Texas. The bridge crossing is on the U.S. Geological Quadrangle entitled Odem, Texas. This part of the Nueces River forms the county line between San Patricio and Nueces counties. Project Description: The purpose of the proposed project is install two steel pile-supports on opposite sides of the existing pier. The applicant also proposes to replace a 20-foot concrete obstruction with two, 5-foot wide steel pile piers. The bridge is 670 feet long and broken into four segments. Segment C was built in 1909 and is the focus of this project. The center span of Segment C is supported in the middle by a damaged, cylindrical concrete pier that served at one time as a pivot for a swing span. By agreement, the swing span function has been abandoned, and both ends of the span have been permanently affixed to piers. Replacement of the concrete obstruction will be advantageous to flood passage and navigation and improve safety. CCC Project : 05-0019-F1; Type of Application: U.S. Coast Guard #16591A is being evaluated as a Section 9 Bridge Permit under the General Bridge Act of 1946 (33 U.S.C.A. Chapter 11, §525).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Gwen Spriggs, Council Administrative Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or gwen.spriggs@glo.state.tx.us. Comments should be sent to Ms. Spriggs at the above address or by fax at 512/475-0680.

TRD-200406730
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: November 9, 2004

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## Comptroller of Public Accounts

### Notice of Coastal Protection Fee Reinstatement

The Comptroller of Public Accounts, administering agency for the collection of the Coastal Protection Fee, has received certification from the Commissioner of the General Land Office that the balance in the Coastal Protection Fund has fallen below the minimum amount allowed by law.

Pursuant to the Natural Resources Code, §40.155 and §40.156, the comptroller hereby provides notice of the reinstatement of the coastal protection fee effective January 1, 2005.

The fee shall be collected on crude oil transferred to or from a marine terminal on or after January 1, 2005, until notice of the suspension of the fee is published in the *Texas Register*.

Inquiries should be directed to Bryant Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas, 78711. This agency hereby certifies that this notice has been reviewed by legal counsel and found to be within the agency's authority to publish.

TRD-200406760
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Filed: November 10, 2004

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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 Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 11/15/04 - 11/21/04 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 11/15/04 - 11/21/04 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-200406702
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 8, 2004

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## East Texas Council of Governments

### Request for Proposals for Worker Training Initiative

This Request for Proposals to interested entities is filed under Government Code 2254.

Notice is given that as the administrative unit for the East Texas Workforce Development Board, the East Texas Council of Governments (ETCOG) is soliciting proposals for worker training initiatives with primary companies. Funding is available to provide access to targeted training dollars for both current and newly hired workers. The Skills Advancement Fund of East Texas (SAFE) is intended as an avenue for primary companies throughout the East Texas WDA to access funding to provide worker training by partnering with providers such as local community colleges or to train workers in-house. The term "primary company" as described in the Request for Proposals, is synonymous with the definition cited in Texas legislation. As applied to the fourteen-county East Texas Workforce Development Area, it refers to a company in an identified industry that manufactures a product or provides a service where at least 50% of sales come from outside the area.

The East Texas Workforce Development Board is responsible for the oversight of state and federally funded training, employment, and childcare services in a fourteen county area around Longview/Marshall and Tyler MSA.

Persons or organizations wanting to receive a Request for Proposals (RFP) package should inquire by letter, fax, or email to East Texas Council of Governments, 3800 Stone Road, Kilgore, Texas 75662, Attn: Daniel Pippin. The fax number for ETCOG is (903) 983-1440. The email address is Daniel.Pippin@twc.state.tx.us. Questions regarding the RFP process can be addressed by calling (903) 984-8641.

A bidders conference will take place on Thursday, December 2, 2004 at 1:30 p.m. It is anticipated that the deadline for receipt of proposals shall be 5:00 p.m. CDT, Thursday, January 13, 2005.

TRD-200406737
Glynn Knight
Executive Director
East Texas Council of Governments
Filed: November 9, 2004

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## Texas Commission on Environmental Quality

### Notice of Availability of the Draft 2004 Clean Water Act, §305(b) Water Quality Inventory and the §303(d) List

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the Draft 2004 Clean Water Act (CWA), §305(b) Water Quality Inventory and the §303(d) List. The report is an overview of the status of surface waters in the state, including concerns for public health, fitness for use by aquatic species and other wildlife, and specific pollutants and their possible sources. In addition, a draft summary is provided of water bodies that do not support beneficial uses or water quality criteria and those water bodies that demonstrate cause for concern. The report is used by TCEQ for management decisions including monitoring, planning, implementing, and funding best management practices to control pollution sources, and to develop a list of impaired waters for selecting water bodies for which total maximum daily load analyses will be initiated.

For 2004, TCEQ conducted a targeted water quality assessment and will submit an integrated report to the United States Environmental Protection Agency (EPA) following the format introduced in 2002. The report was developed using the 2000 Texas Surface Water Quality Standards adopted by TCEQ. The following aspects of the Draft 2002 report were reviewed to prepare the 2004 report using a targeted approach including: the use-attainment status for any water body using recent data where it was demonstrated that the current listing status could be inaccurate; water bodies with concerns for water quality, and where there was insufficient data during the last assessment in 2002, were reevaluated to identify water bodies that do not support the water quality standards (all areas of the water body were reassessed for the parameter of concern); the collection of 24-hour dissolved oxygen data is a priority for the commission and recently available data sets were evaluated for compliance with 24-hour average and minimum criteria; the use-attainment status for some water bodies was reviewed at the request of the TCEQ Water Quality Permitting or Total Maximum Daily Load programs; when special projects were conducted that included a timely reassessment of water quality status as part of a TCEQ-approved work plan, the use-attainment status was reviewed; and changes to fish consumption advisories issued by the Texas Department of State Health Services (formerly the Texas Department of Health) were identified.

The report will be available November 23, 2004 on the TCEQ Web site at: *http://www.tnrcc.state.tx.us/water/quality/04_twqi303d/04_index.html*. Information regarding the public comment period may also be found on the Web site at: *http://www.tnrcc.state.tx.us/water/quality/04_twqi303d/public_comment.html*. Review and comment on individual water bodies and the summaries, as described on the Web site, are encouraged in the period before December 23, 2004.

Any data and information provided to TCEQ to refute or substantiate current assessments must be submitted in summary format, collected using approved TCEQ methods and materials, and consistent with TCEQ quality assurance requirements.

After the public comment period, TCEQ will evaluate all additional data or information received. If any additional data or information submitted influences the draft inventory, this will be reflected in the final Draft 2004 Water Quality Inventory and the §303(d) List submitted to EPA for approval.

TCEQ will consider and respond to comments received on this revised draft, and to comments received during the January 23 - February 23, 2005 comment period, in the "Response to Comments" document posted on the Web site with the Draft 2004 Water Quality Inventory and the §303(d) List. It is not necessary to re-submit comments sent to the TCEQ in January/February. TCEQ will not respond to comments regarding guidance issues other than those that impact changes implemented in 2004.

Individuals unable to access documents on the TCEQ Web site may contact Patrick Roques, Texas Commission on Environmental Quality, Monitoring Operations Division, MC 165, P.O. Box 13087, Austin, Texas 78711-3087. Comments must be received by 5:00 p.m. on December 23, 2004. Information must be submitted in writing and cannot be accepted by phone.

TRD-200406759
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 10, 2004

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### Notice of Water Quality Applications

The following notices were issued during the period of November 2, 2004 through November 5, 2004.

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

AQUA UTILITIES, INC. has applied for a renewal of TPDES Permit 11974-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located approximately 400 feet south of Rockwall Lake Dam and approximately 400 feet northwest of the point where Farm-to-Market Road 3097 crosses Buffalo Creek in Rockwall County, Texas.

AQUA WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit 14361-001, which authorizes the discharge of filter backwash effluent from a water treatment plant at a daily average flow not to exceed 26,700 gallons per day. This application was submitted to the TCEQ on August 20, 2004. The facility is located approximately 1,750 feet east of State Highway 304, approximately 1.12 miles north of the intersection of State Highway 304 and State Highway 713 in Caldwell County, Texas.

COMAL INDEPENDENT SCHOOL DISTRICT has applied for a new permit, Proposed Permit WQ0014533001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day via public access subsurface drip irrigation with a minimum area of 400,752 square feet. The facility and disposal site are located 1,650 feet west of the intersection of Farm-to-Market Road 32 and Farm-to-Market Road 3424 in Comal County, Texas.

FLINT HILLS RESOURCES, LP which operates the West Refinery, a petroleum refinery and the Mid Terminal, a storage terminal, has applied for a minor amendment to TPDES Permit WQ00000531000 to clarify that the permittee is authorized to discharge storm water via Outfalls 004 or 009 from the remediated Upper Storm Water Pond and to add Other Requirement 21, which limits the total combined flow via Outfalls 001 and 012 to a combined daily average flow not to exceed 5,300,000 million gallons per day. The existing permit authorizes the discharge of treated process, storm water, groundwater, marine-generated, domestic, and utility wastewaters from the West Refinery, and contaminated water generated at other facilities at a daily average flow not to exceed 5,300,000 million gallons per day via Outfall 001 or Outfall 012; discharge of hydrostatic test and firewater test wastewaters, steam and air conditioner condensate, reverse osmosis concentrate wastewaters, uncontaminated groundwater, and storm water on an intermittent and flow variable basis via Outfalls 002, 003, 006, 007, and 010; dry weather discharges of hydrostatic test and firewater test wastewaters, steam and air conditioner condensate, reverse osmosis concentrate wastewaters, and uncontaminated groundwater with additional wet weather discharges of storm water, cooling tower and boiler blowdown on an intermittent and flow variable basis via Outfalls 004, 005, 008, and 009; and firewater and firewater test wastewaters on an intermittent and flow variable basis via Outfall 011. The facility is located east and west of Suntide Road and north of Up River Road in the northwest area of, and on the south side of the end of Tribble Lane, in the northern area of the City of Corpus Christi, Nueces County, Texas.

CITY OF JOHNSON CITY has applied for a renewal of TPDES Permit 10198-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 303,000 gallons per day. The facility is located approximately 2,500 feet south-southwest of the U.S. Highway 281 crossing of the Pedernales River and 3,700 feet north of the intersection of Farm-to- Market Road 2766 and U.S. Highway 281 in Blanco County, Texas.

CITY OF MONTGOMERY has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit WQ0011521002, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility will be located approximately 0.15 mile south of Farm-to- Market Road 1097, approximately 0.6 mile east-southeast of the intersection of State Highway 149 and Farm-to-Market Road 1097 in Montgomery County, Texas.

CITY OF POINT COMFORT has applied for a renewal of TPDES Permit 10599-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located at the intersection of Murrah Street and Pease Street, approximately 2900 feet northwest of the intersection of Farm-to-Market Road 1593 and State Highway 35 in Calhoun County, Texas.

QUAIL CREEK MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit 12226-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 220,000 gallons per day. The facility is located approximately 2.5 miles west of the intersection of U.S. Highway 59 and U.S. Highway 77 in Victoria County, Texas.

CITY OF SEGUIN has applied for a renewal of TPDES Permit 10277-002, which authorizes the discharge of filter backwash effluent at a daily average flow not to exceed 40,000 gallons per day. The facility is located 150 feet upstream from the State Highway 123 bridge on the Guadalupe River in the City of Seguin in Guadalupe County, Texas.

TEXAS A&M UNIVERSITY which operates a nuclear reactor at the Nuclear Science Center, a research facility which uses a nuclear reactor to produce radioactive isotopes, has applied for a renewal which includes a minor amendment of TPDES Permit WQ0004003000. The minor amendment is to correct for the missing Outfall 001 Effluent Limitations and Monitoring Requirements page, which was discussed in the August 27, 1999 Statement of Basis/Technical Summary. Inclusion of Outfall 001 in the draft permit will authorize the discharge of storm water and previously monitored effluents (PMEs from internal Outfalls 101 and 201) on an intermittent and flow variable basis via Outfall 001. The current permit authorizes the discharge of wastewater from the liquid waste tanks on an intermittent and flow variable basis via (internal) Outfall 101; and cooling tower blowdown on an intermittent and flow variable basis via (internal) Outfall 201. The facility is located approximately one-mile southwest of the intersection of Farm-to-Market Road 2818 and George Bush Avenue (Jersey Street) and south of the Easterwood Airport in the City of College Station, Brazos County, Texas.

TROPHY CLUB MUNICIPAL UTILITY DISTRICT 1 has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) permit to authorize a change in the method of disinfection from chlorination to ultraviolet (UV) irradiation. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,750,000 gallons per day. The existing permit also authorizes the disposal of treated domestic wastewater via irrigation of the Trophy Club Country Club Golf Course. The facility is located approximately 0.9 mile north of the intersection of State Highway 114 and Trophy Club Drive, approximately 2.5 miles east of the intersection of U.S. Highway 377 and State Highway 114 in Denton County, Texas.

WEST ROAD WATER SUPPLY CORPORATION AND MCDONALD'S CORPORATION which operate the West Road Wastewater Treatment Plant which serves a fast food restaurant, two churches, and retail outlets, have applied for a renewal of TPDES Permit WQ0002761000, which authorizes the discharge of wastewater from a fast food restaurant and domestic wastewater from a fast food restaurant, two churches, and retail outlets at a daily average flow not to exceed 13,000 gallons per day via Outfall 001. The facility is

located at 185 West Road, approximately 100 feet south and 100 feet east of the intersection of West Road and Interstate Highway 45, in the community of Aldine, Harris County, Texas.

THE WHITMORE MANUFACTURING COMPANY which operates a facility that produces specialty lubricating oils and greases, has applied for a renewal of TNRCC Permit 03099, which authorizes the discharge of storm water, once through non-contact cooling water, and boiler blowdown on an intermittent and flow variable basis via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing TNRCC Permit 03099, issued on January 16, 1995. The facility is located at 930 Whitmore Drive in the City of Rockwall, Rockwall County, Texas.

WILLIAM DONALD SMITH has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit WQ0014506001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. This facility was previously permitted under TCEQ Permit 12573-001. The facility is located approximately 100 feet southwest of the intersection of Ramona Road and Vogel Creek at 6901 Ramona in Harris County, Texas.

TRD-200406762
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 10, 2004

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## Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 20, 2004**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 20, 2004**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: A.C.S.S. Dallas Industrial, Inc.; DOCKET NUMBER: 2004-1022-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Identification Number 10082; LOCATION: Grand Prairie, Tarrant County, Texas; TYPE OF FACILITY: underground storage tank (UST); RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2)(A)(i)(III) and the Code, §26.3475(a) and (c), by failing to ensure that all tanks are monitored for releases, by failing to test a line leak detector, and by failing to provide proper release detection; PENALTY: $2,240; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Atofina Petrochemicals, Inc.; DOCKET NUMBER: 2004-1080-AIR-E; IDENTIFIER: Air Account Number HG4662F and Regulated Entity Reference Number (RN) 100909373; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: petrochemical manufacturing; RULE VIOLATED: 30 TAC §116.115(c), TCEQ Air Permit Number 5264, and THSC, §382.085(b), by failing to comply with the emission limits of 11.68 pounds per hour (lbs/hr) for volatile organic compounds, 2.04 lbs/hr of nitrogen oxides, and 17.49 lbs/hr of carbon monoxide; PENALTY: $3,175; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767- 3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Azteca Milling L.P.; DOCKET NUMBER: 2004-1375-AIR-E; IDENTIFIER: Air Account Number HA0106T, Air Operating Permit Number 1038, RN100215086; LOCATION: Plainview, Hale County, Texas; TYPE OF FACILITY: corn milling; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit a timely permit compliance certification; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Jill Reed, (915) 570-1359; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(4) COMPANY: Best Materials Inc.; DOCKET NUMBER: 2004-1074-WQ-E; IDENTIFIER: RN104329735; LOCATION: Calvert, Robertson County, Texas; TYPE OF FACILITY: sand and gravel pit; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(a), by failing to obtain authorization to discharge storm water associated with industrial activity; PENALTY: $8,000; ENFORCEMENT COORDINATOR: Erika Fair, (512) 239-6673; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: City of Bryson; DOCKET NUMBER: 2004-0935-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 1190001, RN101399699; LOCATION: Bryson, Jack County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(b)(1) and THSC, §341.0315(c), by exceeding the maximum contaminant level (MCL) for total trihalomethanes (TTHM); 30 TAC §290.46(e)(6)(A), (f)(3)(B)(v), (m), and (s)(1), and THSC, §341.033(a), by failing to provide a Class B surface certified water works operator, by failing to maintain calibration records, by failing to maintain the flocculation equipment, and by failing to calibrate flow measuring devices and well meters; 30 TAC §290.41(c)(3)(A), by failing to submit well completion data; and 30 TAC §290.121(a), by failing to maintain a chemical and microbiological monitoring plan; PENALTY: $1,628; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 835-3100; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602- 7833, (915) 698-9674.

(6) COMPANY: City of Comanche; DOCKET NUMBER: 2003-1407-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10719-001 (Expired); LOCATION: Comanche, Comanche County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(2), TPDES Permit Number 10719-001, and the Code, §26.121, by failing to renew a permit and continuing to operate without authorization; PENALTY: $3,712; ENFORCEMENT COORDINATOR: Audra

Ruble, (361) 835-3100; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(7) COMPANY: Cooper Concrete Company; DOCKET NUMBER: 2004-0760-WQ-E; IDENTIFIER: Waste Water General Permit Number TXG110417, RN102457082; LOCATION: Garland, Dallas County, Texas; TYPE OF FACILITY: concrete ready-mix; RULE VIOLATED: 30 TAC §305.125(1), Waste Water General Permit Number TXG110417, and the Code, §26.121(a), by failing to comply with the permit limits for total suspended solids (TSS), pH, and oil and grease; PENALTY: $4,000; ENFORCEMENT COORDINATOR: David Van Soest, (512) 239-0468; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588- 5800.

(8) COMPANY: William Briley and Darlene Briley dba Country Meadows Mobile Home Park; DOCKET NUMBER: 2004-0919-MWD-E; IDENTIFIER: RN102476157; LOCATION: Glen Rose, Somervell County, Texas; TYPE OF FACILITY: mobile home park; RULE VIOLATED: 30 TAC §305.42, by failing to complete, sign, and submit a permit application for treatment and disposal of wastewater; and the Code, §26.121(c), by allowing the discharge of sewage; PENALTY: $5,775; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Crest Water Company; DOCKET NUMBER: 2004-1014-PWS-E; IDENTIFIER: PWS Number 1090042, RN101282176; LOCATION: near Keene, Hill County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to provide a sanitary control easement; 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; and 30 TAC §290.46(u), by failing to test a public water system well; PENALTY: $210; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: Degussa Engineered Carbons; DOCKET NUMBER: 2004-1256-AIR-E; IDENTIFIER: Air Account Number AD0001F, RN101462463; LOCATION: Rockport, Aransas County, Texas; TYPE OF FACILITY: carbon place production plant; RULE VIOLATED: 30 TAC §§122.143(4), 122.145(2)(c), and 122.146(2), Operating Permit Number O-01599, and THSC, §382.085(b), by failing to submit the semi-annual deviation report and the annual compliance certification; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(11) COMPANY: City of Eustace; DOCKET NUMBER: 2003-0334-MWD-E; IDENTIFIER: TPDES Permit Number 11132-001, RN101919140; LOCATION: Eustace, Henderson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11132-001, and the Code, §26.121(a), by failing to comply with the final effluent limitations; PENALTY: $19,680; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535- 5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(12) COMPANY: Faulkey Gully Municipal Utility District; DOCKET NUMBER: 2004-0705- MWD-E; IDENTIFIER: TPDES Permit Number 11832-001, RN102178993; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: domestic wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11832-001, and the Code, §26.121(a), by failing to comply with the permit limits for ammonia, TSS, and five-day carbonaceous biochemical oxygen demand (CBOD); PENALTY: $9,590; ENFORCEMENT COORDINATOR: Brandon Smith, (512) 239-4471; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: City of Galveston; DOCKET NUMBER: 2003-0924-PST-E; IDENTIFIER: PST Facility Identification Number 24957, RN102024569; LOCATION: Galveston, Galveston County, Texas; TYPE OF FACILITY: maintenance barn and fleet fueling; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $1,050; ENFORCEMENT COORDINATOR: Lori Thompson, (903) 535-5100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: City of Hempstead; DOCKET NUMBER: 2004-0371-MWD-E; IDENTIFIER: TPDES Permit Number 0023809, RN101920692; LOCATION: Hempstead, Waller County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: the Code, §26.121(a)(1), by failing to prevent the unauthorized discharge of untreated or partially treated domestic wastewater; 30 TAC §305.125(9), by failing to submit non-compliance notification; and 30 TAC §305.125(1), by failing to maintain compliance with the permit effluent limits for CBOD, TSS, and ammonia nitrogen; PENALTY: $9,900; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Hilco United Services, Inc.; DOCKET NUMBER: 2004-1190-PWS-E; IDENTIFIER: PWS Number 1090038, RN102693108; LOCATION: Itasca, Hill County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F) and (3)(J), (K), and (O), and THSC, §341.036(a), by failing to secure a sanitary control easement, by failing to provide a concrete sealing block on well number one, by failing to provide the well casing vent with a 16-mesh or finer corrosion-resistant screen, and by failing to install an intruder-resistant fence; 30 TAC §290.43(c)(3), by failing to provide a properly sealed overflow pipe on the ground storage tank; 30 TAC §290.45(b)(1)(C)(i) and THSC, §341.0315(c), by failing to meet the commission's minimum water system capacity requirements for community water systems; and 30 TAC §290.51(a)(6) and the Code, §5.702(a), by failing to pay all public health service fees; PENALTY: $683; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(16) COMPANY: City of Hooks; DOCKET NUMBER: 2004-1112-MWD-E; IDENTIFIER: TPDES Permit Number 10507-001, RN101916468; LOCATION: Hooks, Bowie County, Texas; TYPE OF FACILITY: domestic wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10507-001, and the Code, §26.121(a), by failing to comply with the permit limits for ammonia nitrogen and flow; PENALTY: $3,120; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(17) COMPANY: Huntsman Petrochemical Corporation; DOCKET NUMBER: 2004-0518-AIR- E; IDENTIFIER: Air Account Number JE0-135Q, Air Permit Number 16989, RN100217389; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: olefins and aromatics plant; RULE VIOLATED: 30 TAC §101.201(a)(2) and (b) and THSC, §382.085(b), by failing to meet initial and final reporting requirements for a reportable emission event; and 30 TAC §101.20(3), §116.715(a) and (c)(7), Air Permit Number 16989/PSD-TX-794, and THSC, §382.085(b), by failing to maintain

an emission rate below the permit allowable; PENALTY: $9,828; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(18) COMPANY: Jeannie Simpson dba Jumpin Jack's; DOCKET NUMBER: 2004-1337-PST-E; IDENTIFIER: PST Facility Identification Number 70149, RN101564185; LOCATION: Terrell, Kaufman County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Chris Friesenhahn, (210) 490- 3096; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: City of Kennard; DOCKET NUMBER: 2004-1259-MWD-E; IDENTIFIER: TPDES Permit Number 11474-001, RN102078169; LOCATION: Kennard, Houston County, Texas; TYPE OF FACILITY: domestic wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11474-001, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for biochemical oxygen demand and TSS; PENALTY: $5,100; ENFORCEMENT COORDINATOR: Edward Moderow, (512) 239-2680; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(20) COMPANY: Leyendecker Construction, Inc.; DOCKET NUMBER: 2004-1447-PST-E; IDENTIFIER: PST Registration Number 23609, RN102261617; LOCATION: Laredo, Webb County, Texas; TYPE OF FACILITY: bulk fuel petroleum storage; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $800; ENFORCEMENT COORDINATOR: Mac Vilas, (512) 239-2557; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(21) COMPANY: Lucky Lady Oil Company dba Super Lucky Lady 2; DOCKET NUMBER: 2004-1021-PST-E; IDENTIFIER: PST Facility Identification Number 10757, RN100539667; LOCATION: Flower Mound, Denton County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A) and Agreed Order Docket Number 2002-0278-PST-E, by failing to ensure that no common carrier shall deposit any regulated substance into a regulated UST system; and 30 TAC §12.1 and §334.22(a) and the Code, §5.702, by failing to pay UST fees; PENALTY: $2,480; ENFORCEMENT COORDINATOR: Chris Friesenhahn, (210) 490-3096; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: Mission Consolidated Independent School District; DOCKET NUMBER: 2004-1125-MWD-E; IDENTIFIER: Water Quality Permit Number 13887-001, RN102179710; LOCATION: Alton, Hidalgo County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), §319.7(a) and (d), and Water Quality Permit Number 13887-001, by failing to comply with the permitted five-day biochemical oxygen demand grab sample limitation, by failing to maintain records of the time of flow measurement and the identity of the person(s) who made the flow measurements, and by failing to have flow measurements, equipment, installation, and procedures conform to those prescribed in the water measurement manual; PENALTY: $2,200; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(23) COMPANY: Thuy T. Nguyen dba Mr. T Market; DOCKET NUMBER: 2004-1301-PST- E; IDENTIFIER: PST Facility Identification Number 44568, RN102385325; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,100; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239- 0321; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: Pak Tex Group, Inc.; DOCKET NUMBER: 2003-0894-PST-E; IDENTIFIER: PST Facility Identification Number 45224, RN101819266; LOCATION: Brenham, Washington County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,850; ENFORCEMENT COORDINATOR: Lori Thompson, (903) 535-5100; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751- 0335.

(25) COMPANY: Praxair, Inc.; DOCKET NUMBER: 2004-1230-IWD-E; IDENTIFIER: TPDES Permit Number WQ0002529000; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0002529000, and the Code, §26.121(a), by failing to comply with the permitted limit for total copper; PENALTY: $1,952; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: Leroy Purser dba Purser Car Care & Grocery; DOCKET NUMBER: 2004- 1302-PST-E; IDENTIFIER: PST Facility Identification Number 23688, RN101541589; LOCATION: Princeton, Collin County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $4,200; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588- 5800.

(27) COMPANY: Suman Enterprises, Incorporated dba JR Food Store; DOCKET NUMBER: 2004-1247-PST-E; IDENTIFIER: PST Facility Identification Number 32949, RN102125572; LOCATION: Victoria, Victoria County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to provide a method of release detection; and 30 TAC §334.49(e) and the Code, §26.3475(d), by failing to maintain records adequate to demonstrate compliance with the corrosion protection requirements; PENALTY: $4,800; ENFORCEMENT COORDINATOR: Larry King, (512) 239-7037; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(28) COMPANY: Ahmad Ali Hamoudeh dba Trading Post Food Store; DOCKET NUMBER: 2004-1194-PST-E; IDENTIFIER: PST Facility Identification Number 43328, RN101489581; LOCATION: Lakeway, Travis County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(8) and (5)(A)(i) and the Code, §26.346(a) and §26.3467(a), by failing to ensure UST registration and self-certification forms were fully and accurately completed and by failing to make available to a common carrier a valid, current delivery certificate; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Leila Pezeshki, (210) 490-3096; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(29) COMPANY: Village of Briarcliff; DOCKET NUMBER: 2004-1131-PWS-E; IDENTIFIER: PWS Number 2270007, RN101214526; LOCATION: Briarcliff, Travis County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by exceeding the MCL for TTHM; PENALTY: $298; ENFORCEMENT COORDINATOR: Michael Limos, (512) 239-5839; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

TRD-200406728
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 9, 2004

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## Office of the Governor

### Request for Applications (RFA) for the Coverdell Forensic Sciences Program.

The Criminal Justice Division (CJD) of the Office of the Governor is soliciting applications to improve current operations in the quality and timeliness of forensic science.

Purpose: The purpose of the project is to improve the quality, timeliness, and credibility of forensic science services for criminal justice purposes.

Available Funding: Federal funding is authorized under the Consolidated Appropriations Act of 2004, Public Law 108-99. All grants awarded from this fund must comply with the requirements contained therein. In addition to the rules related to this funding source, applicants and grantees must comply with the applicable grant management standards adopted under Texas Administrative Code, §3.19, which are hereby adopted by reference. The amount available under the Coverdell Forensic Sciences Program is $454,868.

Eligible Applicants: State agencies and local units of government that provide forensic science or medical examiner services.

Requirements:

(a) Applicants will demonstrate an improvement over current operations in the quality and timeliness of forensic science. Applicants will ensure that all project personnel comply with the federal regulations at 28 C.F.R. Part 22 regarding protection of personally identifiable information that may be collected for research or statistical purposes. Projects must also employ one or more full-time scientist whose principal duties are examining physical evidence for law enforcement agencies in criminal justice matters and providing testimony with respect to such physical evidence to the criminal justice system.

(b) Allowable expenditures are limited to:

(1) Personnel costs, including overtime, fellowships, visiting scientists, interns, consultants, or contracted staff;

(2) Education and training, including internal and external training and continuing education, that is directly applicable to the job position and duties of the individuals receiving the training;

(3) Laboratory and computer equipment including upgrading, replacing, and purchasing laboratory equipment, instrumentation, and computer hardware or software for forensic analysis and data management; and

(4) Supplies including laboratory items needed to perform analysis and to conduct validation studies, and other expenses directly attributable to conducting various types of forensic analysis.

(c) The required output measures for recipients of Coverdell funding are as follows:

(1) The number of days between submission of a sample to a forensic science laboratory and delivery of test results to the requesting office or agency.

(2) The number of samples processed for criminal justice purposes.

(3) The number of samples processed in forensic science and medical examiner services.

(4) The number of training sessions attended.

(5) The number of analysts that attended forensic training.

(6) The number of cases received each month.

(7) The number of cases analyzed each month.

Project Period: Grant-funded projects must begin on or after February 1, 2005, and will expire on or before August 31, 2005.

Prohibitions: Grant funds may not be used for the following:

(1) Expenses for general law enforcement or non-forensic investigatory functions;

(2) Construction or renovation costs; and

(3) Indirect costs.

Application Process: Eligible applicants can download an application kit from the Office of the Governor, Criminal Justice Division web site at http://www.governor.state.tx.us.

Closing Date for Receipt of Applications: All applications must be submitted electronically directly to the Office of the Governor, Criminal Justice Division, via e-mail at: cjdapps@governor.state.tx.us on or before December 15, 2004. Applicants must also submit the Grant Application Certification Form signed by the Authorized Official and the resolution via facsimile at (512) 475-2440 to the Office of the Governor, Criminal Justice Division on or before December 15, 2004.

Preferences: Preference will be given to projects to support education, training, and personnel costs.

Selection Process: Applications are reviewed by CJD for eligibility, reasonableness, availability of funding, and cost-effectiveness. A Determine Eligibility Form is included with the application kit and must be completed in its entirety in order to be considered for funding.

Contact Person: If additional information is needed, contact Susana Garcia at sgarcia@governor.state.tx.us or at (512) 463-1919.

TRD-200406767
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: November 10, 2004

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## Department of State Health Services

### Notice of Agreed Order with Allure Laser and Day Spa, Inc.

On November 5, 2004, the Radiation Program Officer, Department of State Health Services (department), approved the settlement agreement between the department and Allure Laser and Day Spa, Inc. (registrant-Z01779) of Austin. A total administrative penalty in the amount of $1,000 was assessed the registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant will also comply with additional settlement agreement requirements.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200406746
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: November 9, 2004

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## Notice of Amendment Number 30 to the Radioactive Material License of Waste Control Specialists, LLC

Notice is hereby given by the Department of State Health Services (department), Radiation Safety Licensing Branch, that it has amended Radioactive Material License Number L04971 issued to Waste Control Specialists, LLC (WCS) located in Andrews County, Texas, one mile North of State Highway 176; 250 feet East of the Texas/New Mexico State Line; 30 miles West of Andrews, Texas.

Amendment number 30 allows the licensee to stabilize special nuclear material during waste processing without being limited to an established list of chemicals. This change maintains the requirement for WCS to maintain safe concentrations during batch processing and incorporates the requirements of the November 5, 2004, United States Nuclear Regulatory Commission's Order, Docket 70-7005, issued to WCS.

The department has determined that the amendment of the license and the documentation submitted by the licensee provide reasonable assurance that the licensee's radioactive waste facility is operated in accordance with the requirements of Title 25, Texas Administrative Code (TAC), Chapter 289; the amendment of the license will not be inimical to the health and safety of the public or the environment; and the activity represented by the amendment of the license will not have a significant effect on the human environment.

This notice affords the opportunity for a public hearing, upon written request, within 30 days of the date of publication of this notice by a person affected as required by Texas Health and Safety Code, §401.116, and as set out in 25 TAC, §289.205(f). 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 a county, in which the 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 person affected may request a hearing by writing Mr. Richard A. Ratliff, P.E., Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas, 78756-3189. Any request for a hearing must contain the name and address of the person who considers himself affected by this action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing be timely filed, the agency action will be final.

A public hearing, if requested, shall be conducted in accordance with the provisions of Texas Health and Safety Code, Chapter 401, the Administrative Procedure Act (Chapter 2001, Texas Government Code), the formal hearing procedures of the department (25 TAC, §1.21 et seq.) and the procedures of the State Office of Administrative Hearings (1 TAC, Chapter 155).

A copy of the license amendment and supporting materials are available, by appointment, for public inspection and copying at the office of the Radiation Safety Licensing Branch, Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, 8:00 a.m. to 5:00 p.m. Monday-Friday (except holidays). Information relative to inspection and copying the documents may be obtained by contacting Chrissie Toungate, Custodian of Records, Radiation Safety Licensing Branch.

TRD-200406745
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: November 9, 2004

♦ ♦ ♦

## Notice of Emergency Cease and Desist Order on Timothy A. Beste, M.D., P.A., dba Medical Surgical Clinic

Notice is hereby given that the Department of State Health Services (department) ordered Timothy A. Beste, M.D., P.A., doing business as Medical Surgical Clinic (registrant-R02574) of Lewisville to cease and desist using the Picker x-ray unit until the entrance exposure radiation level is within regulatory limits.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200406744
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: November 9, 2004

♦ ♦ ♦

## Notice of Intent to Revoke Certificates of Registration

Pursuant to 25 Texas Administrative Code, §289.205, the Department of State Health Services (department), filed complaints against the following x-ray machine or laser registrants: Stephen C. Hanson, D.D.S., San Antonio, R12878; Harrill Calhoun Chiropractic Center, PC, Austin, R17905; Heritage Dental Center, McKinney, R21164; AMCI Corporation, Houston, R22357; Anthony Belcher, D.P.M., Huntsville, R22378; J. Nordquist, Inc., Weatherford, R23036; South Belt Dental, Houston, R25983; ATMEL Texas, LP, Irving, R25987; Houston Diagnostic and Treatment Center, Houston, R26194; Carson Laser Incorporated, Winchester, Indiana, Z01151.

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 department 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 department within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Ruth E. McBurney, CHP, Manager, Radiation Safety Licensing Branch, 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 Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200406747
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: November 9, 2004

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### Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Pineywoods Diagnostic Clinic

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Pineywoods Diagnostic Clinic (registrant-R14344-000) of Huntington. A total penalty of $8,000 is proposed to be assessed the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Texas Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200406749
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: November 9, 2004

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### Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on VHS San Antonio Partners, LP dba Baptist Health System

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to VHS San Antonio Partners, LP dba Baptist Health System (licensee-L00455) of San Antonio. A total penalty of $5,000 is proposed to be assessed the licensee for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Texas Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200406748
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: November 9, 2004

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## Texas Health and Human Services Commission

### Notice of Hearing on Proposed Provider Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on December 7, 2004, to receive public comment on proposed payment rates for: Residential Care (RC), Community Based Alternatives Assisted Living/Residential Care (CBA AL/RC) and Assisted Living/Residential Care services under the Consolidated Waiver. These programs are operated by the Texas Department of Aging and Disability Services (DADS). These payment rates are proposed to be effective January 1, 2005. The hearing will be held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), which requires public hearings on proposed payment rates. The public hearing will be held on December 7, 2004, at 9:00 a.m. in Room 1023 of the Braker Center Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021. Written comments regarding payment rates may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Tony Arreola, HHSC Rate Analysis, MC H-400, 1100 West 49th Street, Austin, Texas 78756-3101. Express mail can be sent, or written comments can be hand delivered, to Mr. Arreola, HHSC Rate Analysis, MC H-400, Braker Center Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Mr. Arreola at (512) 491-1998. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting Tony Arreola, HHSC Rate Analysis, MC H-400, 1100 West 49th Street, Austin, Texas 78756-3101.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Tony Arreola, HHSC Rate Analysis, MC H-400, 1100 West 49th Street, Austin, Texas 78756-3101, telephone number (512) 491-1358, by December 1, 2004, so that appropriate arrangements can be made.

Proposal. HHSC proposes an adjustment to the provider payment rates for the RC and CBA AL/RC programs as well as Assisted Living/Residential Care services under the Consolidated Waiver. Each of these programs is operated by DADS. The proposed rates are based upon a reduction in the room-and-board payment component of the current rate that is equal to the increase in the Social Security Income (SSI) Federal Benefit Rate increase for a single individual. The proposed payment rates adjust for the increase in the SSI Federal Benefit Rate, which clients will begin receiving effective January 1, 2005. The effect of this proposal is that clients will use the increase in their SSI amount to increase their room-and-board payment to cover a greater share of the rate, thereby reducing the DADS share of the rate.

Methodology and justification. The proposed rates were determined in accordance with the rate reimbursement setting methodology at 1 TAC §355.503(d)(2)(a) for the CBA AL/RC program, 1 TAC §355.509(c)(1)(F)(iv) for the Residential Care Program, and 1 TAC §355.506(a) for the Consolidated Waiver.

TRD-200406763
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: November 10, 2004

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### Notice of Hearing on Proposed Provider Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on December 7, 2004, to receive public comment on proposed Medicaid payment rates for state-operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR). This program is operated by the Texas Department of Aging and Disability Services (DADS). These payment rates are proposed to be effective September 1, 2004. The hearing will be held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), which requires public hearings on proposed payment rates. The public hearing will be held on December 7, 2004, at 11:00 a.m. in the Palo Duro Conference Room of the Braker Center Building H, at 11209 Metric

Boulevard, Austin, Texas 78758-4021. Written comments regarding payment rates may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Tony Arreola, HHSC Rate Analysis, MC H-400, 1100 West 49th Street, Austin, Texas 78756-3101. Express mail can be sent, or written comments can be hand delivered, to Mr. Arreola, HHSC Rate Analysis, MC H-400, Braker Center Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Mr. Arreola at (512) 491-1998. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting Tony Arreola, HHSC Rate Analysis, MC H-400, 1100 West 49th Street, Austin, Texas 78756-3101, telephone number (512) 491-1358.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Tony Arreola, HHSC Rate Analysis, MC H-400, 1100 West 49th Street, Austin, Texas 78756-3101, telephone number (512) 491-1358, by November 30, 2004, so that appropriate arrangements can be made.

Proposal. As the single state agency for the state Medicaid program, the Health and Human Services Commission proposes new rates for the State-Operated ICF/MR program operated by DADS. Payment rates effective for September 1, 2004 are proposed as follows:

| | Current Rates | Proposed Rates |
|---|---|---|
| State-Operated ICF/MRs Large Facilities | $279.86 | $291.64 |
| State-Operated ICF/MRs Small Facilities | $191.84 | $199.04 |

Methodology and justification. The proposed rates were determined in accordance with the rate setting methodology codified as 1 Texas Administrative Code §355.456, relating to Reimbursement Rates.

TRD-200406766
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: November 10, 2004

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Public Notice

The Texas Health and Human Services Commission announces its intent to amend the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

Transmittal Number 04-27, Amendment Number 691, removes references to service coordination provided to individuals who were enrolled in the Mental Retardation Local Authorities (MRLA) program. The amendment does not impact the current rate for service coordination for persons with mental retardation related conditions or pervasive developmental disabilities. The individuals who were enrolled in the MRLA program have been enrolled in the Home and Community Based Services (HCS) program, which contains a service coordination component. The proposed effective date for this state plan amendment is December 1, 2004.

There is no anticipated fiscal impact as a result of this amendment.

The anticipated date of completion for the proposed amendment to the state plan is December 1, 2004. At that time, copies of the proposed amendment will be made available to interested parties by contacting Gilbert Estrada, Policy Analyst with Medicaid/CHIP Division, at the Health and Human Services Commission; 1100 West 49th Street, MC-H600, Austin, Texas 78758-3160, or by e-mail at gilbert.estrada@hhsc.state.tx.us. Copies of the proposal also will be made available for public review in December 2004 at the local offices of the Department of Aging and Disability Services (formerly the Texas Department of Human Services).

TRD-200406726
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: November 9, 2004

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Public Notice

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 04-25, Amendment Number 689, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to add a new section to the state plan for Primary Care Case Management (PCCM). Previously, PCCM was allowed through a federal waiver. The state proposes to move PCCM from the waiver to the state plan to support the expansion of Medicaid Managed Care in Texas.

The proposed amendment is estimated to result in annual aggregate expenditures of $24,094,247 for state fiscal year (SFY) 2005, with $20,605,013 federal expenditures and $3,489,234 in state general revenue expenditures. The proposed amendment will result in an estimated annual aggregate cost savings of $18,106,207 for SFY 2006, with an estimated $10,325,991 federal cost savings and $7,780,216 state general revenue cost savings.

The anticipated date of completion for the proposed amendment to the state plan is December 1, 2004. At that time, copies of the proposed amendment will be made available to interested parties by contacting Gilbert Estrada, Policy Analyst with Medicaid/CHIP Division, at the Health and Human Services Commission; MC - H-600, P.O. Box 85200-5200, Austin, Texas 78756, or by e-mail at gilbert.estrada@hhsc.state.tx.us. Copies of the proposal also will be made available for public review in December 2004 at the local offices of the Department of Aging and Disability Services (formerly the Texas Department of Human Services).

TRD-200406757
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: November 10, 2004

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## Texas Department of Housing and Community Affairs

Bootstrap Loan Program NOFA

**Notice of Funding Availability (NOFA)**

The Texas Department of Housing and Community Affairs (TDHCA), through its Office of Colonia Initiatives (OCI), is pleased to announce the availability of approximately Three Million Dollars ($3,000,000) of State of Texas Housing Trust Funds to purchase or refinance real property on which to build new residential or improve existing residential housing through self-help construction for very low and extremely low income individuals and/or families (owner-builders); including persons with special needs.

TDHCA administers the Texas Bootstrap Loan Program (the "Program") by working through Colonia Self-Help Centers established under Subchapter Z, §2306.582 of the Texas Government Code or a nonprofit organization certified by TDHCA as a Nonprofit Owner-Builder Housing Programs (NOHP) as described in Subchapter FF, §2306.755 of the Texas Government Code.

To be eligible for state certification, TDHCA may certify NOHP's operated by a tax-exempt organization listed under §501(C)(3), Internal Revenue Code of 1986 to:

(1) qualify potential owner-builders for loans under this subchapter;

(2) provide owner-builder education classes such as;

(a) financial responsibilities of an owner-builder under this subchapter, including the consequences of an owner-builder's failure to meet those responsibilities;

(b) building of housing by owner-builders;

(c) resources for low-cost building materials available to owner-builders; and

(d) resources for building assistance available to owner-builders.

(3) assist owner-builders in building housing; and

(4) originate or service loans made by the TDHCA under this subchapter.

In an effort to encourage the production of affordable housing for individuals and families of extremely low income, TDHCA is meeting its goal of directing the funds in accordance to Rider 3, General Appropriations Act 78th Legislative Session. In addition, §2306.753(a) of the Texas Government Code directs TDHCA to establish a priority in directing funds to owner-builders with an annual income of less

than $17,500. The maximum amount of funding per organization is $600,000. The maximum loan amount using TDHCA funds may not exceed $30,000 per owner-builder. The total amount of loans made with TDHCA and any other source combined may not exceed $60,000 per household. TDHCA, may, at its discretion, award funds above the maximum $600,000 award limit to eligible organizations that have in the past demonstrated successful implementation of this initiative. Projects utilizing additional non-TDHCA resources will be required to provide additional documentation identifying the sources of these additional funds and information about their rates and terms.

To be eligible for a loan, an owner-builder:

(1) may not have an annual income that exceeds 60 percent, as determined by TDHCA, of the greater of the state or local Area Median Family Income (AMFI), when combined with the income of any person who resides with the owner-builder;

(2) must have resided in this state for the preceding six months;

(3) must have successfully completed an owner-builder education class; and

(4) must agree to:

(A) provide at least 60 percent of the labor necessary to build or rehabilitate the proposed housing by working through a state certified NOHP; or

(B) provide an amount of labor equivalent to the amount required in connection with building or rehabilitating housing for others through a state certified NOHP;

(C) TDHCA may select a NOHP to certify the eligibility of owner-builders to receive a loan. A state certified NOHP selected by TDHCA shall use the eligibility requirements established by TDHCA to certify the eligibility of an owner-builder for the program.

In accordance with Subchapter FF, §2306.753(d) of the Texas Government Code, TDHCA shall set aside at least two-thirds of the available funds for owner-builders whose property is located in Economically Distressed Counties (EDC):

Bee

Brewster

Brooks

Cameron

Culberson

Dimmit

Duval

El Paso

Frio

Hidalgo

Hudspeth

Jeff Davis

Jim Wells

Kinney

La Salle

Liberty

Marion

Matagorda

Maverick

Newton

Presidio

Red River

Reeves

Sabine

San Patricio

Starr

Terrell

Tyler

Uvalde

Val Verde

Ward

Webb

Willacy

Winkler

Zapata

Zavala

The remainder of the funding will be available to TDHCA state certified NOHP in the State of Texas. The amounts available for distribution are as follows:

*$1,000,000 State of Texas*

*$2,000,000 Economically Distressed Counties (EDC)*

Applicants who have received a Program award in the past must have expended and/or have under construction seventy-five (75%) of its previous award to be considered under this NOFA as of October 31, 2004.

General Information for NOFA:

Applications meeting threshold criteria will be evaluated and scored within categories, including but not limited to Operational Capacity and Experience, Financial Design, Quality of Program Design, Leveraging of Public and Private Resources, and serving Underserved Areas and Population. Applications will then be selected based on program scoring criteria, underwriting criteria, and geographic dispersion. In accordance with Subchapter FF, §2306.757 of the Texas Government Code, TDHCA shall give priority to loans to owner-builders who will reside in counties or municipalities that agree in writing to waive capital recovery fees, building permit fees, inspection fees, or other fees related to the building of the housing to be built with the loan proceeds. TDHCA desires to select a diverse group of state certified NOHP's that will serve various populations throughout the state.

The NOHP state certification application can be downloaded from TDHCA's web-site located at http://www.tdhca.state.tx.us/oci/documents/NOHPCertificationWebsite.pdf. In addition, applicants for this program are encouraged to download the FY 2005 Texas Bootstrap Loan Program application from TDHCA's web-site located at http://www.tdhca.state.tx.us/oci/bootstrap.jsp. Applicants may also request a hard copy version of the application. Application packages will be transmitted via first class U.S. Postal Service unless applicants request transmittal via overnight courier and provide the name and account number of their desired courier.

TDHCA's Board of Directors reserves the right to change the award amount, and to award less than the requested amount.

Applications must be received at TDHCA on or before 5:00 p.m., Friday January 14, 2005.

FAXED APPLICATIONS WILL NOT BE ACCEPTED.

All interested parties are encouraged to participate in this program. Applications will be available on November 19, 2004. Technical assistance for this application will be provided during November 19, 2004 thru January 14, 2005. For additional information or to request an application package, please call Phyllis A. Calderon with the Office of Colonia Initiatives at (800) 462-4251, check TDHCA's website at www.tdhca.state.tx.us or e-mail your request to pbuenros@tdhca.state.tx.us. Please direct your applications to:

Texas Department of Housing and Community Affairs

ATTN: Office of Colonia Initiatives

Post Office Box 13941

Austin, Texas 78711-3941

Or by courier to:

507 Sabine, Suite 400

Austin, Texas 78701

TRD-200406753
Edwina Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: November 10, 2004

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### Notice of Public Hearing

**Multifamily Housing Revenue Bonds (Sugar Pines Apartments) Series 2005**

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Westfield 9th Grade Center, 1500 Southridge, Houston, Texas 77090, at 6:00 p.m. on December 6, 2004 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $11,600,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Sugar Pines Apartments, L.P., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing development (the "Development") described as follows: 150-unit multifamily residential rental development to be located northwest of the intersection of Willow Leaf and Sugar Pine Drive at approximately the 16900 block of Sugar Pine Drive, Harris County, Texas. The Development initially will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213; and/or robbye.meyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Robbye Meyer at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200406761
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: November 10, 2004

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## Texas Department of Insurance

### Company Licensing

Application for incorporation to the State of Texas by AMERICAN NATIONAL PROPERTY & CASUALTY COMPANY OF TEXAS, a domestic fire and/or casualty company. The home office is in Galveston, Texas.

Application for admission to the State of Texas by FARMERS & RANCHERS LIFE INSURANCE COMPANY, under the assumed name AMERICAN FARMERS & RANCHERS LIFE INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Oklahoma City, Oklahoma.

Application for admission to the State of Texas OKLAHOMA FARMERS UNION MUTUAL INSURANCE COMPANY, under the assumed name AMERICAN FARMERS & RANCHERS MUTUAL INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Oklahoma City, Oklahoma.

Application for admission to the State of Texas by CHURCH LIFE INSURANCE CORPORATION, a foreign life, accident and/or health company. The home office is in New York, New York.

Application for admission to the State of Texas by ASSURANCEAMERICA INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Atlanta, Georgia.

Application to change the name of FORTIS BENEFITS INSURANCE COMPANY to UNION SECURITY INSURANCE COMPANY a foreign life, accident and/or health company. The home office is in Kansas City, Missouri.

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, within 20 days after this notice is published in the *Texas Register*.

TRD-200406765
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: November 10, 2004

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### Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of BENISTAR ADMIN SERVICES, INC., a foreign third party administrator. The home office is WILMINGTON, DELAWARE.

Application for admission to Texas of PROVIDENT AGENCY, INC., a foreign third party administrator. The home office is PITTSBURGH, PENNSYLVANIA.

Application for admission to Texas of CAM ADMINISTRATIVE SERVICES, INC., a foreign third party administrator. The home office is SOUTHFIELD, MICHIGAN.

Application for admission to Texas of BKD, LLP, a foreign third party administrator. The home office is SPRINGFIELD, MISSOURI.

Application for admission to Texas of GRASIL, INC., a foreign third party administrator. The home office is ORLANDO, FLORIDA.

Application for incorporation in Texas of TEXAS PENSION CONSULTANTS, INC., a domestic third party administrator. The home offfice is WACO, TEXAS.

Application for incorporation in Texas of RECEPT HEALTHCARE SERVICES, L.P. (using the assumed name of WORKSCRIPTS), a domestic third party administrator. The home office is FORT WORTH, TEXAS.

Application to change the name of TRIP MATE INSURANCE AGENCY, INC., to TRIP MATE, INC., a foreign third party administrator. The home office is OVERLAND PARK, KANSAS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200406758
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: November 10, 2004

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## Texas Lottery Commission

End of Game Notices 2004

LEGAL NOTICE:

These Texas Lottery Commission scratch-off games will close on November 30, 2004. You have until May 29, 2005, to redeem any tickets for these games: #403 WILD CHERRY SLOTS ($1) overall odds are 1 in 4.78, #422 MIDAS TOUCH ($2) overall odds are 1 in 4.77, #429 DOUBLING RED 7'S ($2) overall odds are 1 in 4.64, #431 WILD BILL ($2) overall odds are 1 in 4.64, #432 BLAZIN' EIGHTS ($5) overall odds are 1 in 3.54, #434 DOUBLER BINGO ($2) overall odds are 1 in 4.00, #435 CROSSWORD ($3) overall odds are 1 in 3.13, #437 TOP TENS ($10) overall odds are 1 in 3.87, #445 $130,000 BONUS ($5) overall odds are 1 in 4.42. The odds listed here are the overall odds of winning any prize in a game, including break-even prizes. Lottery retailers are authorized to redeem prizes of up to and including $599. Prizes of $600 or more must be claimed in person at a Lottery Claim Center or by mail with a completed Texas Lottery claim form; however, annuity prizes or prizes over $999,999 must be claimed in person at the Commission Headquarters in Austin. Call Customer Service at 1-800-37-LOTTO or visit the Lottery Web site at www.txlottery.org for more information and location of nearest Claim Center. The Texas Lottery is not responsible for lost or stolen tickets, or for tickets lost in the mail. Tickets, transactions, players, and winners are subject to, and players and winners agree to abide by, all applicable laws, Commission rules, regulations, policies, directives, instructions, conditions, procedures, and final decisions of the Executive Director. A scratch-off game may continue to be sold even when all the top prizes have been claimed. Must be 18 years of age or older to purchase a Texas Lottery ticket. Play Responsibly. Remember, it's just a game. The Texas Lottery supports Texas education by contributing to the Foundation School Fund.

TRD-200406625
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 5, 2004

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Instant Game Number 519 "Pinball"

1.0 Name and Style of Game.

A. The name of Instant Game 519 is "PINBALL". The play style is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game 519 shall be $3.00 per ticket.

1.2 Definitions in Instant Game 519.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9,10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, $1.00, $3.00, $6.00, $9.00, $10.00, $15.00, $18.00, $24.00, $30.00, $60.00,$90.00, $300, $3,300 or $33,000.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 519 - 1.2D

| PLAY SYMBOL | CAPTION |
|---|---|
| 1 | ONE |
| 2 | TWO |
| 3 | THR |
| 4 | FOR |
| 5 | FIV |
| 6 | SIX |
| 7 | SVN |
| 8 | EGT |
| 9 | NIN |
| 10 | TEN |
| 11 | ELV |
| 12 | TLV |
| 13 | TRN |
| 14 | FTN |
| 15 | FFN |
| 16 | SXN |
| 17 | SVT |
| 18 | ETN |
| 19 | NTN |
| 20 | TWY |
| 21 | TWTO |
| 22 | TWTO |
| 23 | TWTH |
| 24 | TWFR |
| $1.00 | ONE$ |
| $3.00 | THREE$ |
| $6.00 | SIX$ |
| $9.00 | NINE$ |
| $10.00 | TEN$ |
| $15.00 | FIFTN |
| $18.00 | EGHTN |
| $24.00 | TWY FOR |
| $30.00 | THIRTY |
| $60.00 | SIXTY |
| $90.00 | NINTY |
| $300 | THR HUND |
| $3,300 | 33 HUND |
| $33,000 | 33 THOU |

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 519 - 1.2E

| CODE | PRIZE |
|---|---|
| THR | $3.00 |
| SIX | $6.00 |
| NIN | $9.00 |
| FTN | $15.00 |
| EHT | $18.00 |
| TFR | $24.00 |

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $3.00, $6.00, $9.00, $15.00, $18.00 or $24.00.

H. Mid-Tier Prize - A prize of $30.00, $60.00, $90.00 or $300.

I. High-Tier Prize - A prize of $3,000, $3,300 or $33,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (519), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 519-0000001-001.

L. Pack - A pack of "PINBALL" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "PINBALL" Instant Game 519 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "PINBALL" Instant Game is determined once the latex on the ticket is scratched off to expose 26 (twenty-six) Play Symbols. If a player matches any of YOUR BALL NUMBERS play symbols to any of the BUMPER NUMBERS play symbols the player wins prize indicated for that number. If a player matches any of YOUR BALL NUMBERS play symbols to the DOUBLER NUMBER play symbol the player wins double the prize indicated for that doubler number. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 26 (twenty-six) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 26 (twenty-six) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 26 (twenty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 26 (twenty-six) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A ticket will only win as indicated by the prize structure.

B. Consecutive non-winning tickets will not have identical play data, spot for spot.

C. No duplicate YOUR BALL NUMBERS play symbols on a ticket.

D. No duplicate non-winning BUMPER NUMBERS play symbols on a ticket.

E. No duplicate non-winning prize symbols on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the BUMPER NUMBERS play symbol (i.e. 5 and $5).

H. The DOUBLER NUMBER play symbol will match a YOUR BALL NUMBERS play symbol only on intended winning tickets as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "PINBALL" Instant Game prize of $3.00, $6.00, $9.00, $15.00, $18.00, $24.00, $30.00, $60.00, $90.00 or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $30.00, $60.00, $90.00 or $300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "PINBALL" Instant Game prize of $3,000, $3,300 or $33,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "PINBALL" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "PINBALL" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "PINBALL" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game 519. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 519 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in** |
|---|---|---|
| $3 | 483,840 | 10.42 |
| $6 | 322,560 | 15.63 |
| $9 | 90,720 | 55.56 |
| $15 | 30,240 | 166.67 |
| $18 | 50,400 | 100.00 |
| $24 | 40,320 | 125.00 |
| $30 | 40,320 | 125.00 |
| $60 | 16,338 | 308.48 |
| $90 | 5,460 | 923.08 |
| $300 | 1,554 | 3,243.24 |
| $3,000 | 7 | 720,000.00 |
| $3,300 | 4 | 1,260,000 |
| $33,000 | 8 | 630,000.00 |

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.66. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game 519 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game 519, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200406603
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 3, 2004

♦ ♦ ♦

Instant Game Number 522 "Bonus Numbers"

1.0 Name and Style of Game.

A. The name of Instant Game 522 is "BONUS NUMBERS". The play style for game Scene 1 is "key number match with Bonus Box". The

play style for game Scene 2 is "key number match with Bonus Box". The play style for game Scene 3 is "yours beats theirs with Bonus Box. The play style for game Scene 4 is "match-up with Bonus Box".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game 522 shall be $1.00 per ticket.

1.2 Definitions in Instant Game 522.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: $1.00, $2.00, $4.00,$5.00, $10.00, $20.00, $25.00, $50.00, $250, $1,000, 1, 2, 3, 4, 5, 6, 7, 8, 9, Diamond Symbol, Club Symbol, Heart Symbol and Spade Symbol.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 522 - 1.2D

| PLAY SYMBOL | CAPTION |
|---|---|
| $1.00 | ONE$ |
| $2.00 | TWO$ |
| $4.00 | FOUR$ |
| $5.00 | FIVE$ |
| $10.00 | TEN$ |
| $20.00 | TWENTY |
| $25.00 | TWY FIV |
| $50.00 | FIFTY |
| $250 | TWO FTY |
| $1,000 | ONE THOU |
| 1 | ONE |
| 2 | TWO |
| 3 | THR |
| 4 | FOR |
| 5 | FIV |
| 6 | SIX |
| 7 | SVN |
| 8 | EGT |
| 9 | NIN |
| DIAMOND SYMBOL | DIAM |
| CLUB SYMBOL | CLUB |
| HEART SYMBOL | HEART |
| SPADE SYMBOL | SPADE |

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 522 - 1.2E

| CODE | PRIZE |
|---|---|
| ONE | $1.00 |
| TWO | $2.00 |
| FOR | $4.00 |
| FIV | $5.00 |
| TEN | $10.00 |
| TWN | $20.00 |

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $5.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $55.00 or $250.

I. High-Tier Prize- A prize of $1,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (522), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 522-0000001-001.

L. Pack - A pack of "BONUS NUMBERS" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 246 to 250 will be on the last page. A ticket will be folded over on both the front and back of the book so both ticket art and ticket backs are displayed in the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BONUS NUMBERS" Instant Game 522 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BONUS NUMBERS" Instant Game is determined once the latex on the ticket is scratched off to expose 50 (fifty) Play Symbols. In the game Scene 1, if a player matches any of YOUR AMOUNTS play symbols to the WINNING AMOUNT play symbol the player wins prize indicated. If a player reveals a "1" play symbol in the Bonus Box the player wins $5.00 automatically. In the game Scene 2, if player matches any of YOUR NUMBERS play symbols to the WINNING NUMBER play symbol the player wins prize indicated. If a player reveals a "2" play symbol in the Bonus Box the player wins $5.00 automatically. In the game Scene 3, if a player's YOUR NUMBER play symbol beats THEIR NUMBER play symbol within a game the player wins prize indicated for that game. If a player reveals a "3" play symbol in the Bonus Box the player wins $5.00 automatically. In the game Scene 4, if a player matches four (4) identical play symbols in the same horizontal row the player wins prize indicated for that row. If a player reveals a "4" play symbol in the Bonus Box the player wins $5.00 automatically. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 50 (fifty) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 50 (fifty) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 50 (fifty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 50 (fifty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Scene1: No duplicate non-winning YOUR AMOUNTS play symbols or prize symbols.

C. Scene 2: Non-winning play symbols will never occur with the same prize symbol (i.e. 5 and $5) on a ticket.

D. Scene 2: No duplicate non-winning YOUR NUMBERS play symbols or prize symbols.

E. Scene 2: No WINNING NUMBER play symbol will never match the BONUS number play symbol on that ticket.

F. Scene 3: No ties between YOURS and THEIRS play symbols.

G. Scene 3: No duplicate games.

H. Scene 3: No duplicate non-winning prize symbols.

I. Scene 4: No duplicate non-winning rows in the same order.

J. Scene 4: The card suits will vary among the possible locations.

K. Scene 4: No 4 like play symbols in a column or diagonal.

L. Scene 4: No duplicate non-winning prize symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "BONUS NUMBERS" Instant Game prize of $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $55.00 or $250, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $55.00 or $250 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BONUS NUMBERS" Instant Game prize of $1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BONUS NUMBERS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "BONUS NUMBERS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "BONUS NUMBERS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 15,120,000 tickets in the Instant Game 522. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 522 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in** |
|---|---|---|
| $1 | 1,451,520 | 10.42 |
| $2 | 1,088,640 | 13.89 |
| $4 | 241,920 | 62.50 |
| $5 | 181,440 | 83.33 |
| $10 | 120,960 | 125.00 |
| $20 | 60,480 | 250.00 |
| $55 | 10,521 | 1,437.13 |
| $250 | 1,260 | 12,000.00 |
| $1,000 | 252 | 60,000.00 |

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.79. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game 522 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game 522, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200406736
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 9, 2004

♦ ♦ ♦

Instant Game Number 532 "Tripler Bingo"

1.0 Name and Style of Game.

A. The name of Instant Game 532 is "TRIPLER BINGO". The play style is "bingo with tripler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game 532 shall be $2.00 per ticket.

1.2 Definitions in Instant Game 532.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: B01, B02, B03, B04, B05, B06, B07, B08, B09, B10, B11, B12, B13, B14, B15, I16, I17, I18, I19, I20, I21, I22, I23, I24, I25, I26, I27, I28, I29, I30, N31, N32, N33, N34, N35, N36, N37, N38, N39, N40, N41, N42, N43, N44, N45, G46, G47, G48, G49, G50, G51, G52, G53, G54, G55, G56, G57, G58, G59, G60, O61, O62, O63, O64, O65, O66, O67, O68, O69, O70, O71, O72, O73, O74, O75, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, FREE, and TPL.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 532 - 1.2D

| PLAY SYMBOL | CAPTION |
|---|---|
| B01 | |
| B02 | |
| B03 | |
| B04 | |
| B05 | |
| B06 | |
| B07 | |
| B08 | |
| B09 | |
| B10 | |
| B11 | |
| B12 | |
| B13 | |
| B14 | |
| B15 | |
| I16 | |
| I17 | |
| I18 | |
| I19 | |
| I20 | |
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| N36 | |
| N37 | |
| N38 | |
| N39 | |
| N40 | |
| N41 | |
| N42 | |
| N43 | |
| N44 | |
| N45 | |
| G46 | |

| | |
|---|---|
| G47 | |
| G48 | |
| G49 | |
| G50 | |
| G51 | |
| G52 | |
| G53 | |
| G54 | |
| G55 | |
| G56 | |
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| 70 | |
| 71 | |
| 72 | |
| 73 | |
| 74 | |
| 75 | |
| FREE | |
| TPL | |

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 532 - 1.2E

| CODE | PRIZE |
|---|---|
| TWO | $2.00 |
| THR | $3.00 |
| FIV | $5.00 |
| TEN | $10.00 |
| FTN | $15.00 |
| TWN | $20.00 |

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $3.00, $5.00, $10.00, $15.00 or $20.00.

H. Mid-Tier Prize - A prize of $30.00, $50.00, $100, or $500.

I. High-Tier Prize- A prize of $1,000 or $30,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (532), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 532-0000001-001.

L. Pack - A pack of "TRIPLER BINGO" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 125 will be revealed on the back of the pack. Every other book will reverse i.e., the back of ticket 001 will be shown on the front of the pack and the front of ticket 125 will be shown on the back of the pack.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TRIPLER BINGO" Instant Game 532 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "TRIPLER BINGO" Instant Game is determined once the latex on the ticket is scratched off to expose 130 (one hundred thirty) play symbols. The player must scratch off the CALLER'S CARD area to reveal 24 (twenty-four) Bingo Numbers and six (6) Bonus Numbers. The player must mark all the BINGO NUMBERS on Cards 1 through 4 that match the Caller's Card. Each card has a corresponding prize box on any one "Card". Players win by matching those same numbers on the four Player's Cards. If the player finds a diagonal, vertical or horizontal straight line, the four corners of the grid, or an X pattern, they win a prize according to the legend of the respective playing grid. Examples of play: If a player matches all bingo numbers plus the Free Space in a complete horizontal, vertical, or diagonal line pattern in any one card the player wins prize according to the legend of the respective playing card. If the player matches all bingo numbers in all four (4) corners pattern in any one card the player wins prize according to the legend of the respective playing card. If the player matches all bingo numbers plus Free Space to make a complete "X" pattern in

any one card the player wins prize according to the legend of the respective playing card. The TPL symbol in the four Bingo Cards can be used as a FREE space to complete a winning pattern. If the TPL symbol appears in any winning Bingo pattern, the prize is tripled. For example, a diagonal line winner is created if a player matches 3 of the 4 required numbers and reveals a TPL symbol in that line. The Player can win up to four times on any ticket but only once on each "card".

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 130 (one hundred thirty) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 130 (one hundred thirty) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 130 (one hundred thirty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 130 (one hundred thirty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A ticket will win as indicated by the prize structure.

B. A ticket can win up to four times and only once per Card.

C. Adjacent tickets in a pack will not have identical patterns.

D. There will never be more than one win on a single Bingo Card.

E. No duplicate numbers will appear on the Caller's Card and Bonus Numbers.

F. No duplicate numbers will appear on each individual Player's Card.

G. Each Caller's Card will have a minimum of four (4) and a maximum of six (6) numbers from each range per letter. The Bonus Numbers will have a maximum of two (2) numbers for each range per letter.

H. The TPL symbol will act as a FREE space. If a winning pattern is found which contains a TPL symbol, the prize won will be Tripled.

I. The number range used for each letter will be as follows: B: 01-15; I: 16-30; N: 31-45; G: 46-60; O: 61-75.

J. Each Player's Card on the same ticket must be unique.

2.3 Procedure for Claiming Prizes.

A. To claim a "TRIPLER BINGO" Instant Game prize of $2.00, $3.00, $5.00, $10.00, $15.00, $20.00, $30.00, $50.00, $100, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $30.00, $50.00, $100, or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TRIPLER BINGO" Instant Game prize of $1,000 or $30,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated

winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TRIPLER BINGO" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "TRIPLER BINGO" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "TRIPLER BINGO" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 19,920,000 tickets in the Instant Game 532. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 532 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in ** |
|---|---|---|
| $2 | 2,390,400 | 8.33 |
| $3 | 1,314,720 | 15.15 |
| $5 | 637,440 | 31.25 |
| $10 | 159,360 | 125.00 |
| $15 | 119,520 | 166.67 |
| $20 | 159,360 | 125.00 |
| $30 | 70,965 | 280.70 |
| $50 | 49,800 | 400.00 |
| $100 | 18,675 | 1,066.67 |
| $500 | 1,245 | 16,000.00 |
| $1,000 | 55 | 362,181.82 |
| $30,000 | 8 | 2,490,000.00 |

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.05 The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game 532 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game 532, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200406698
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 8, 2004

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## Manufactured Housing Division

Request for Qualifications for IPIA Engineering Services

The Texas Department of Housing and Community Affairs, Manufactured Housing Division (MHD) announces a request for qualifications (RFQ) for IPIA Engineer Services.

**Brief Description of Services.** The Department anticipates the need for an engineer to address those responsibilities outlined in the Manufactured Home Construction and Safety Standards, 24 CFR Part 3280 and the Manufactured Home Procedural and Enforcement Regulations, 24 CFR Part 3282. A firm's ability to respond quickly is essential. A firm is expected to assign those professionals employed by the firm who are best suited to respond appropriately to the Department's request for engineering services.

**Selection Criteria.** The Proposal will be selected based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in Subpart H of the Manufactured Home Procedural and Enforcement Regulations Part 3282. Reviewers will evaluate applications based on the overall quality and validity of the proposed programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in Subpart H to be considered for the project. MHD reserves the right to select from the highest-ranking applications those that address all requirements in the RFP and that are most advantageous to the project.

**Requesting the Qualifications.** A complete copy of RFQ #MHD2005-001 may be obtained by writing the Manufactured Housing Division, Attn: Cindy Bocz, Texas Department of Housing and Community Affairs, P.O. Box 12489, Austin, Texas 78701; by calling (512) 475-2884; by faxing (512) 475-4706; or by e-mailing cindy.bocz@tdhca.state.tx.us. Please refer to the RFQ number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter and complete RFQ will also be posted on the TDHCA/MHD website at http://www.tdhca.state.tx.us/mh/ for viewing and downloading.

**Further Information.** For clarifying information about the RFQ, contact Cindy Bocz, Manufactured Housing Division, Texas Department of Housing and Community Affairs, (512) 475-2884.

**Deadline for Receipt of SOQ.** Statement of Qualifications must be received in the Manufactured Housing of the TDHCA by 5:00 p.m. (Central Time), Wednesday, December 15, 2004, to be considered.

**Mailing Instructions.** The original proposal and two copies must be mailed to the contact person for this RFQ.

TRD-200406643
Timothy K. Irvine
Executive Director
Manufactured Housing Division
Filed: November 8, 2004

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## Texas Department of Public Safety

### Notice of Public Hearing

In accordance with HB 2650 enacted by the 78th legislature, the Public Safety Radio Communications Council (PSRCC) shall "oversee the implementation of a statewide integrated public safety radio communications system for public safety and homeland security purposes."

By this notice, the Texas Department of Public Safety announces that a meeting of the Public Safety Radio Communications Council will be held on November 23, 2004, at 10:30 a.m., in the Commission Room, Building A, 5805 North Lamar Blvd., Department of Public Safety Headquarters, Austin, Texas 78773. The agenda for the meeting:

Call to Order

Welcome

Discussion and possible action on the 2004 PSRCC Legislative Report

Adjourn

No public testimony will be taken. For further information, please contact:

Robert Pletcher

RF Unit, Department of Public Safety

5805 North Lamar Blvd.

Austin, Texas 78773-0251

Phone: (512) 424-5307

e-mail: robert.pletcher@txdps.state.tx.us

TRD-200406752
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Filed: November 9, 2004

♦ ♦ ♦

## Public Utility Commission of Texas

### Notice of Application for Certificate of Convenience and Necessity for a Proposed Transmission Line in Johnson County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on November 8, 2004, for a certificate of convenience and necessity for a proposed transmission line in Johnson County, Texas.

Docket Style and Number: Application of Brazos Electric Power Cooperative, Inc. for a Certificate of Convenience and Necessity (CCN) for a Proposed Transmission Line in Johnson County, Texas. Docket Number 30365.

The Application: The project is designated the Jessica Transmission Line Project. According to the applicant, the project is needed to solve steady load growth in the area southwest of Mansfield, Texas. The right-of-way width for this project is approximately 70 feet with a length of approximately 4 miles. The estimated cost for the project is $3,758,791. The estimated completion date is June 30, 2006.

Persons wishing to intervene or 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. The deadline for intervention in this proceeding is December 23, 2004. 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 30365.

TRD-200406741
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 9, 2004

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### Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On November 1, 2004, Broadview Networks, Incorporated filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60352. Applicant intends to reflect a change in ownership/control.

The Application: Application of Broadview Networks, Incorporated for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 30377.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 24, 2004. 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 30377.

TRD-200406619
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 4, 2004

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### Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority

On November 1, 2004, USLD 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 60003. Applicant intends to relinquish its certificate.

The Application: Application of USLD to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 30380.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 24, 2004. 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 30380.

TRD-200406620

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 4, 2004

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## Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on November 3, 2004, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of UCN, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 30389 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, and long distance services.

Applicant's requested SPCOA geographic area includes the area of the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 24, 2004. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30389.

TRD-200406740
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 9, 2004

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## Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on November 4, 2004, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of ACNInfo.com/Cecil H. Wallace, Jr. for a Service Provider Certificate of Operating Authority, Docket Number 30391 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, HDSL, SDSL, RADSL, VDSL, Optical Services, T1-Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, long distance and wireless services.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 24, 2004. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30391.

TRD-200406739
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 9, 2004

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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 of an application on November 1, 2004, for waiver of denial by the North American Numbering Plan Administrator (NANPA) Pooling Administrator (PA) of Mid-Tex Cellular, Limited's expedited request for numbering resources in the Ballinger rate center .

Docket Title and Number: Application of Mid-Tex Cellular, Limited for Waiver of Neustar Denial and Request for Expedited Action. Docket Number 30382.

The Application: Mid-Tex Cellular, Limited submitted an application to the Pooling Administrator (PA) for numbering resources in the Ballinger rate center. The PA denied the request based on the grounds that Mid-Tex Cellular, Limited did not meet the rate-center-based month-to-exhaust and number utilization criteria established by the guidelines.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 3, 2004. 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 30382.

TRD-200406621
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 4, 2004

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## Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on November 8, 2004, for an amendment to certificated service area boundaries within Cameron County, Texas.

Docket Style and Number: Application of the Brownsville Public Utilities Board (BPUB) to Amend a Certificate of Convenience and Necessity for Service Area Boundaries within Cameron County (Los Olmitos Estates). Docket Number 30408.

The Application: The application encompasses an area of land which is singly certificated to American Electric Power Company (AEP), formerly known as Central Power & Light (CP&L), and is within the corporate limits of the City of Brownsville (City). BPUB received a letter request to provide electric utility service for a proposed subdivision called Los Olmitos Estates consisting of 99.86 acres of land located on the south side of FM 511. The estimated cost to BPUB to provide service to this proposed area is $546,725.00. If the application is granted the area would be dually certificated for electric service.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than November 29, 2004,

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 30408.

TRD-200406742
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 9, 2004

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### Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on November 8, 2004, for an amendment to certificated service area boundaries within Cameron County, Texas.

Docket Style and Number: Application of the Brownsville Public Utilities Board (BPUB) to Amend a Certificate of Convenience and Necessity for Service Area Boundaries within Cameron County (Burnell Country Estates). Docket Number 30409.

The Application: The application encompasses an area of land which is singly certificated to American Electric Power Company (AEP), formerly known as Central Power & Light (CP&L), and is within the corporate limits of the City of Brownsville. BPUB received a letter request to provide electric utility service to a proposed subdivision called Burnell Country Estates consisting of 120 acres of land located on the corner of FM 511 and Old Alice Road. The estimated cost to BPUB to provide service to this proposed area is $342,000.00. If the application is granted the area would be dually certificated for electric service.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than November 29, 2004, 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 30409.

TRD-200406743
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 9, 2004

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### Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On November 2, 2004, Rent City 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 60076. Applicant intends to relinquish its certificate.

The Application: Application of Rent City to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 30383.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 24, 2004. 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 30383.

TRD-200406626
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 5, 2004

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### Notice of Petition 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 of a petition on November 4, 2004, for waiver of denial by the North American Numbering Plan Administrator (NANPA) Pooling Administrator (PA) of Sprint Communications Company L.P. (Sprint) request for numbering resources in the Irving rate center.

Docket Title and Number: Petition of Sprint Communications Company L.P. for Waiver of Neustar Denial of Number Block Request in Irving Rate Center. Docket Number 30395.

The Application: Sprint submitted an application to the Pooling Administrator (PA) for numbering resources in the Irving rate center. The PA denied the request based on the grounds that Sprint did not meet the utilization threshold necessary in order to obtain growth number resources.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 29, 2004. 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 30395.

TRD-200406738
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 9, 2004

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## San Antonio-Bexar County Metropolitan Planning Organization

### Request for Proposals

The San Antonio-Bexar County Metropolitan Planning Organization is soliciting the professional services of a certified public accountant to perform the activities outlined in the Request for Proposal for the Audit of Expenditures for Fiscal Years 2004-05, and 2005-06. Anyone wishing to submit a proposal must do so by 12:00 p.m. (CDT), Friday, January 7, 2005 at the MPO office. Our physical and mailing address is: Metropolitan Planning Organization; 1021 San Pedro, Suite 2200; San Antonio, Texas 78212

You may access this RFP on our web site by Monday, December 6, 2004: www.sametroplan.org

TRD-200406725
Joanne Walsh
Director
San Antonio-Bexar County Metropolitan Planning Organization
Filed: November 8, 2004

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## Texas Department of Transportation

### Public Hearing Concerning the Transition of Transportation Services for Clients of Eligible Programs

In accordance with Transportation Code, §455.0015(c), the Texas Department of Transportation will conduct a public hearing to receive comments concerning the transition of transportation services for clients of eligible programs from the Department of Health and the Health and Human Services Commission to the Texas Department of Transportation.

The public hearing will be held on December 7, 2004, at 4:00 p.m. - first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas. Additional public meetings will be scheduled throughout the state after January 1, 2005, to gain additional input.

This hearing will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting thirty minutes before the hearing begins. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Ginnie Grayson, Public Transportation Division, 125 East 11th Street, Austin, Texas 78701-2483, (512) 416-2867 at least three working days prior to the hearing so that appropriate services can be provided.

SUBMITTAL OF WRITTEN COMMENTS

Written comments may be submitted to Susan N. Bryant, Director, Public Transportation Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of written comments is 5:00 p.m. on December 20, 2004.

TRD-200406754
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: November 10, 2004

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### Public Hearing Notice - Highway Project Selection Process

In accordance with Transportation Code, §201.602, the Texas Transportation Commission (commission) will conduct a public hearing to receive data, comments, views, and/or testimony concerning the commission's highway project selection process and the relative importance of the various criteria on which the commission bases its project selection decisions. It is emphasized that the subject of the hearing will be the procedure by which projects are selected and not the merits or details of specific projects themselves.

The public hearing will be held on Thursday, December 16, 2004, at 9:00 a.m., in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 E. 11th Street, Austin, Texas. The hearing will be held in accordance with the procedures specified in 43 TAC §1.5. Any interested person may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the commission as may be necessary to ensure a complete record. While any person with pertinent comments or testimony concerning the selection procedure will be granted an opportunity to present them during the course of the hearing, the commission reserves the right to restrict testimony in terms of time and repetitive comment. Organizations, associations, or groups are encouraged to present their commonly-held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend the hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Randall Dillard, Director, Public Information Office, at 125 E. 11th St., Austin, Texas 78701-2383, or (512) 305-9196 at least two working days prior to the hearing so that appropriate arrangements can be made.

Highway project selection information will be available at the department's Riverside Annex, 118 E. Riverside Drive, Bldg. 118, Room 2B-6, Austin, (512) 486-5050. Written comments may be submitted to the Texas Department of Transportation, Attention: James L. Randall, P.E., P.O. Box 149217, Austin, Texas 78714-9217. The deadline for receipt of comments is 5:00 p.m. on January 18, 2005.

TRD-200406755
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: November 10, 2004

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### Request for Proposal for Aviation Engineering Services

Grayson County, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT, Aviation Division will solicit and receive proposals for professional aviation engineering design services described in this notice.

Airport Sponsor: Grayson County, Grayson County Airport. TxDOT CSJ :0501DENSN Scope: Provide engineering/design services to perform a runway and taxiway pavement evaluation study, recommend improvements, and to design recommended improvements at the Grayson County Airport.

The DBE goal is set at 10%. TxDOT Project Manager is Ed Oshinski, P.E.

To assist in your proposal preparation, the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online by selecting "Grayson County Airport" at:

www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address:

http://www.dot.state.tx.us/avn/avn550.doc

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

(Attention: To ensure utilization of the latest version of Form 550, firms are encouraged to download Form 550 from the TxDOT website. Utilization of Form 550 from a previous download may not be the exact same format. Form 550 is an MS Word Template).

Six completed, unfolded copies of Form AVN 550 must be postmarked by U. S. Mail no later than midnight December 20, 2004, (CDST). Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. (CDST) on December 21, 2004; overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. December 21, 2004 (CDST); hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of local government members.

The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at:

www.dot.state.tx.us/business/avnconsultinfo.htm

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. In such case, selection will be made following interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager, or Ed Oshinski, P.E., Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200406756
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: November 10, 2004

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## Texas Workers' Compensation Commission

### Invitation to Apply to the Medical Advisory Committee (MAC)

The Texas Workers' Compensation Commission seeks to have a diverse representation on the MAC and invites qualified individuals from all regions of Texas to apply for openings on the MAC in accordance with the eligibility requirements of the *Procedures and Standards for the Medical Advisory Committee*. The Medical Review Division is currently accepting applications for the following Medical Advisory Committee representative vacancies:

*Primary*

* Public Health Care Facility

*Alternate*

* Public Health Care Facility

* Dentist

* Pharmacist

* Podiatrist

* Employer

* Employee

* General Public Representative 1

* General Public Representative 2

Commissioners for the Texas Workers' Compensation Commission appoint the Medical Advisory Committee members who are composed of 18 primary and 18 alternate members representing health care providers, employees, employers, insurance carriers, and the general public. Primary members are required to attend all Medical Advisory Committee meetings, subcommittee meetings, and work group meetings to which they are appointed. The alternate member may attend all meetings, however during a primary member's absence, the alternate member must attend meetings to which the primary member is appointed. Requirements and responsibilities of members are established in the Procedures and Standards for the Medical Advisory Committee as adopted by the Commission.

The Medical Advisory Committee meetings must be held at least quarterly each fiscal year during regular Commission working hours. Members are not reimbursed for travel, per diem, or other expenses associated with Committee activities and meetings. Voluntary service on the Medical Advisory Committee is greatly appreciated by the TWCC Commissioners and the TWCC Staff.

The purpose and task of the Medical Advisory Committee, which includes advising the Commission's Medical Review Division on the development and administration of medical policies, rules and guidelines, are outlined in the Texas Workers' Compensation Act, §413.005.

Applications and other relevant Medical Advisory Committee information may be viewed and downloaded from the Commission's website at *http://www/twcc.state.tx.us.* Click on 'Commission Meetings', then 'Medical Advisory Committee'. Applications may also be obtained by calling Jane McChesney, MAC Coordinator, at 512-804-4855 or Ruth Richardson, Manager of Monitoring, Analysis and Education, Medical Review Division at 512-804-4850 .

The qualifications as well as the terms of appointment for all positions are listed in the Procedures and Standards for the Medical Advisory Committee. These Procedures and Standards are as follows:

LEGAL AUTHORITY The Medical Advisory Committee for the Texas Workers' Compensation Commission, Medical Review Division is established under the Texas Workers' Compensation Act, (the Act) §413.005.

PURPOSE AND ROLE The purpose of the Medical Advisory Committee (MAC) is to bring together representatives of health care specialties and representatives of labor, business, insurance and the general public to advise the Medical Review Division in developing and administering the medical policies, fee guidelines, and the utilization guidelines established under §413.011 of the Act.

COMPOSITION Membership. The composition of the committee is governed by the Act, as it may be amended. Members of the committee are appointed by the Commissioners and must be knowledgeable and qualified regarding work-related injuries and diseases.

Members of the committee shall represent specific health care provider groups and other groups or interests as required by the Act, as it may be amended. As of September 1, 2001, these members include a public health care facility, a private health care facility, a doctor of medicine, a doctor of osteopathic medicine, a chiropractor, a dentist, a physical therapist, a podiatrist, an occupational therapist, a medical equipment supplier, a registered nurse, and an acupuncturist. Appointees must have at least six (6) years of professional experience in the medical profession they are representing and engage in an active practice in their field.

The Commissioners shall also appoint the other members of the committee as required by the Act, as it may be amended. An insurance carrier representative may be employed by: an insurance company; a certified self-insurer for workers' compensation insurance; or a governmental entity that self-insures, either individually or collectively. An insurance carrier member may be a medical director for the carrier but may not be a utilization review agent or a third party administrator for the carrier.

A health care provider member, or a business the member is associated with, may not derive more than 40% of its revenues from workers compensation patients. This fact must be certified in their application to the MAC.

The representative of employers, representative of employees, and representatives of the general public shall not hold a license in the health care field and may not derive their income directly from the provision of health care services.

The Commissioners may appoint one alternate representative for each primary member appointed to the MAC, each of whom shall meet the qualifications of an appointed member.

Terms of Appointment: Members serve at the pleasure of the Commissioners, and individuals are required to submit the appropriate application form and documents for the position. The term of appointment for any primary or alternate member will be two years, except for unusual circumstances (such as a resignation, abandonment or removal from the position prior to the termination date) or unless otherwise directed by the Commissioners. A member may serve a maximum of two terms as a primary, alternate or a combination of primary and alternate member. Terms of appointment will terminate August 31 of the second year following appointment to the position, except for those positions that were initially created with a three-year term. For those members who are appointed to serve a part of a term that lasts six (6) months or less, this partial appointment will not count as a full term.

Abandonment will be deemed to occur if any primary member is absent from more than two (2) consecutive meetings without an excuse accepted by the Medical Review Division Director. Abandonment will be deemed to occur if any alternate member is absent from more than two (2) consecutive meetings which the alternate is required to attend because of the primary member's absence without an excuse accepted by the Medical Review Division Director.

The Commission will stagger the August 31st end dates of the terms of appointment between odd and even numbered years to provide sufficient continuity on the MAC.

In the case of a vacancy, the Commissioners will appoint an individual who meets the qualifications for the position to fill the vacancy. The Commissioners may re-appoint the same individual to fill either a primary or alternate position as long as the term limit is not exceeded. Due to the absence of other qualified, acceptable candidates, the Commissioners may grant an exception to its membership criteria, which are not required by statute.

RESPONSIBILITY OF MAC MEMBERS Primary Members. Make recommendations on medical issues as required by the Medical Review Division.

Attend the MAC meetings, subcommittee meetings, and work group meetings to which they are appointed.

Ensure attendance by the alternate member at meetings when the primary member cannot attend.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies.

Alternate Members. Attend the MAC meetings, subcommittee meetings, and work group meetings to which the primary member is appointed during the primary member's absence.

Maintain knowledge of MAC proceedings.

Make recommendations on medical issues as requested by the Medical Review Division when the primary member is absent at a MAC meeting.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies when the primary member is absent from a MAC meeting.

Committee Officers. The TWCC Commissioners designate the chairman of the MAC. The MAC will elect a vice chairman. A member shall be nominated and elected as vice chairman when he/she receives a majority of the votes from the membership in attendance at a meeting at which nine (9) or more primary or alternate members are present.

Responsibilities of the Chairman: Preside at MAC meetings and ensure the orderly and efficient consideration of matters requested by the Medical Review Division; prior to meetings, confer with the Medical Review Division Director, and when appropriate, the TWCC Executive Director to receive information and coordinate:

a. Preparation of a suitable agenda.

b. Planning MAC activities.

c. Establishing meeting dates and calling meetings.

d. Establishing subcommittees.

e. Recommending MAC members to serve on subcommittees.

If requested by the Commission, appear before the Commissioners to report on MAC meetings.

COMMITTEE SUPPORT STAFF The Director of Medical Review will provide coordination and reasonable support for all MAC activities. In addition, the Director will serve as a liaison between the MAC and the Medical Review Division staff of TWCC, and other Commission staff if necessary.

The Medical Review Director will coordinate and provide direction for the following activities of the MAC and its subcommittees and work groups:

Preparing agenda and support materials for each meeting.

Preparing and distributing information and materials for MAC use.

Maintaining MAC records.

Preparing minutes of meetings.

Arranging meetings and meeting sites.

Maintaining tracking reports of actions taken and issues addressed by the MAC.

Maintaining attendance records.

SUBCOMMITTEES The chairman shall appoint the members of a subcommittee from the membership of the MAC. If other expertise is needed to support subcommittees, the Commissioners or the Director of Medical Review may appoint appropriate individuals.

WORK GROUPS When deemed necessary by the Director of Medical Review or the Commissioners, work groups will be formed by the Director. At least one member of the work group must also be a member of the MAC.

WORK PRODUCT No member of the MAC, a subcommittee, or a work group may claim or is entitled to an intellectual property right in work performed by the MAC, a subcommittee, or a work group.

MEETINGS Frequency of Meetings. Regular meetings of the MAC shall be held at least quarterly each fiscal year during regular Commission working hours.

CONDUCT AS A MAC MEMBER Special trust has been placed in members of the Medical Advisory Committee. Members act and serve on behalf of the disciplines and segments of the community they represent and provide valuable advice to the Medical Review Division and the Commission. Members, including alternate members, shall observe the following conduct code and will be required to sign a statement attesting to that intent.

Comportment Requirements for MAC Members:

Learn their duties and perform them in a responsible manner;

Conduct themselves at all times in a manner that promotes cooperation and effective discussion of issues among MAC members;

Accurately represent their affiliations and notify the MAC chairman and Medical Review Director of changes in their affiliation status;

Not use their memberships on the MAC: a. in advertising to promote themselves or their business. b. to gain financial advantage either for themselves or for those they represent; however, members may list MAC membership in their resumes;

Provide accurate information to the Medical Review Division and the Commission;

Consider the goals and standards of the workers' compensation system as a whole in advising the Commission;

Explain, in concise and understandable terms, their positions and/or recommendations together with any supporting facts and the sources of those facts;

Strive to attend all meetings and provide as much advance notice to the Texas Workers' Compensation Commission staff, attn: Medical Review Director, as soon as possible if they will not be able to attend a meeting; and

Conduct themselves in accordance with the MAC Procedures and Standards, the standards of conduct required by their profession, and the guidance provided by the Commissioners, Medical Review Division or other TWCC staff.

TRD-200406734
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: November 9, 2004

## How to Use the Texas Register

**Information Available**: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

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

**Secretary of State** - opinions based on the election laws.

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

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

**Proposed Rules** - sections proposed for adoption.

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

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

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

**Transferred Rules**- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

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

**Review of Agency Rules** - notices of state agency rules review.

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

**How to Cite**: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 29 (2004) is cited as follows: 29 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 "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 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 16, April 9, July 9, and October 8, 2004). 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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