
TEXAS REGISTER

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*Makinzy Almand
10th Grade*

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

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Open Meetings

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

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

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

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

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

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/open/index.shtml>

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

Additional information about state government may be found here:
<http://www.texas.gov>

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

THE ATTORNEY GENERAL

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

An index to the full text of these documents is available from
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

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

Opinions

Opinion No. GA-1039

The Honorable Lucinda A. Vickers

Atascosa County Attorney

#1 Courthouse Circle Drive #3-B

Jourdanton, Texas 78026

Re: The proper expenditure of pretrial intervention program funds accumulated in accordance with Code of Criminal Procedure article 102.0121 (RQ-1141-GA)

S U M M A R Y

Under Code of Criminal Procedure article 102.0121, pretrial intervention program funds may be used to refurbish courthouse facilities, train

staff, and purchase office supplies only to the extent that such expenditures reimburse a county for expenses related to a defendant's participation in a pretrial intervention program and are used for the administration of the program.

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

TRD-201400318

Katherine Cary

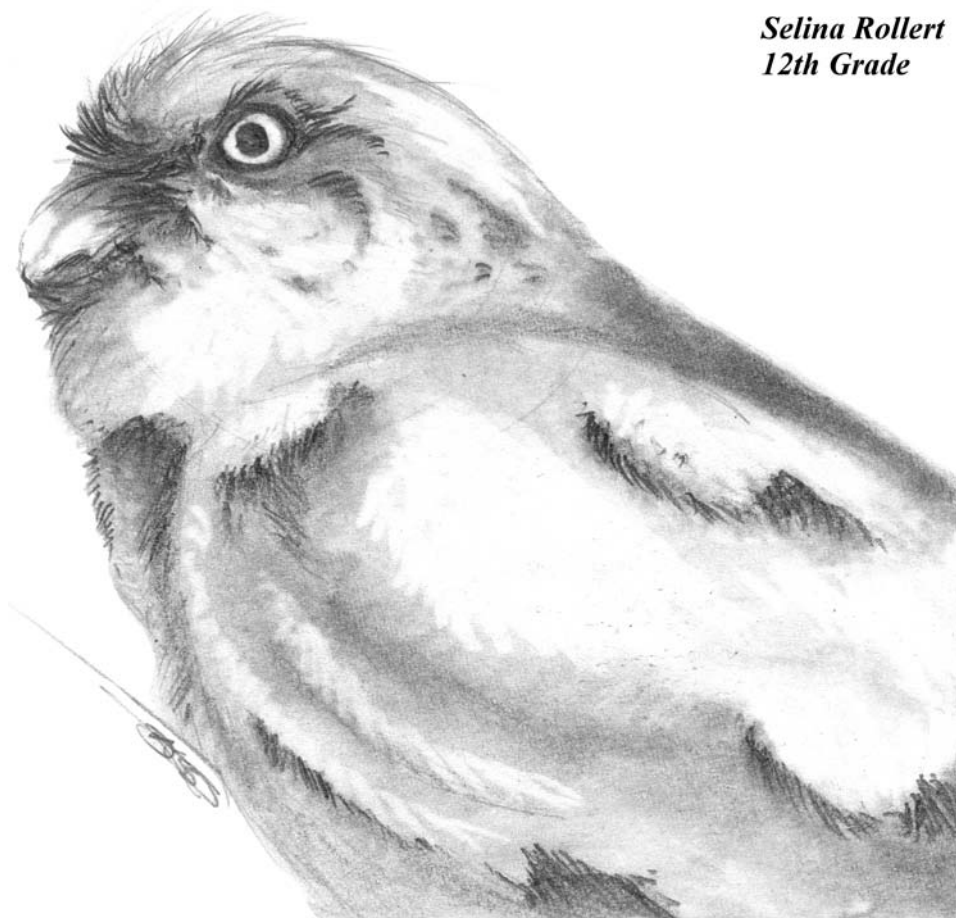
General Counsel

Office of the Attorney General

Filed: January 29, 2014



Selina Rollert
12th Grade



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 Requests

AOR-584. The Texas Ethics Commission has been asked to consider whether a city may permit a political committee to participate in a city-sponsored "adopt-a-park" program, whereby the city purchases and displays within the park a sign that includes the name of the political committee in exchange for the political committee's clean-up activities within the park.

The Texas Ethics Commission is authorized by §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 159, Local Government Code; (8) Chapter

36, Penal Code; (9) Chapter 39, Penal Code; (10) §2152.064, Government Code; and (11) §2155.003, Government 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-201400317

Natalia Luna Ashley

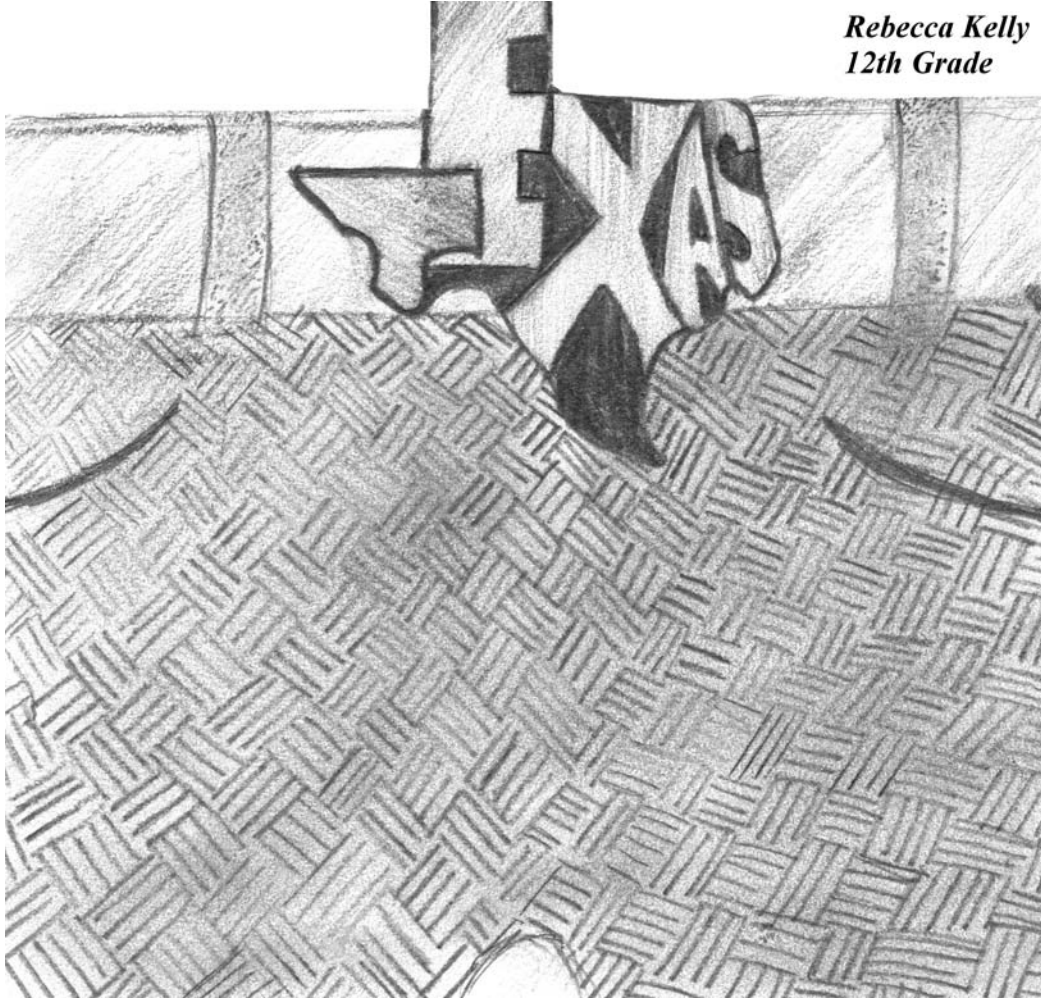
Interim Director/Special Counsel

Texas Ethics Commission

Filed: January 29, 2014



Rebecca Kelly
12th Grade



EMERGENCY RULES

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

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER V. MEXICAN FRUIT FLY QUARANTINE

4 TAC §§19.500 - 19.509

The Texas Department of Agriculture (the department) adopts on an emergency basis new §§19.500 - 19.509, concerning a quarantine for the Mexican fruit fly (Mexfly) *Anastrepha ludens* (Loew). The new sections are adopted on an emergency basis to prevent the spread of Mexflies and to maintain eradicated status. The emergency rules require application of treatments and prescribe specific restrictions on the handling and movement of quarantined articles.

Texas spent more than 80 years under United States Department of Agriculture (USDA) permanent quarantine for Mexfly. On January 3, 2012, Mexfly was declared eradicated in Texas by USDA's Animal and Plant Health Inspection Service (APHIS) because no Mexflies had been trapped since May 8, 2009. An ongoing risk of reintroduction of the pest is mitigated by continued trapping to detect incipient re-infestations.

Consistent with this risk mitigation, four mature male Mexflies and two immature female Mexflies were taken recently in McPhail traps baited with Bio Lure in Weslaco, Hidalgo County, Texas, necessitating the filing in the *Texas Register* of an emergency quarantine for the Weslaco quarantined area, a 103.7 square mile area surrounding the capture site, in order to implement measures to maintain the state's eradicated status. The quarantined area includes 1,729 acres of commercial citrus fruit production groves and one commercial fruit packing shed.

This emergency quarantine provides for the department to designate additional quarantined areas and core areas within quarantined areas as new infestations occur, and provides methods of notifying affected producers of additional designated quarantined areas and core areas within an infested area.

The department believes that it is necessary to take this immediate action to maintain the fly-free status of Hidalgo County and to prevent the spread of the Mexfly in commercial citrus growing areas of Texas and other states. The department believes that adoption of this quarantine on an emergency basis is both necessary and appropriate. The citrus industry in particular is in peril because without this emergency quarantine and treatment of the infestation, a statewide quarantine implemented by the USDA could become necessary, with resultant losses of impor-

tant export markets and requirements for regulatory treatments such as fumigation of all exported fruit. This emergency quarantine takes necessary steps to prevent the artificial spread of the quarantined pest and provides for its elimination, thus protecting the state's important citrus industry.

New §19.500 defines various significant terms. New §19.501 defines the quarantined pest and explains the basis for the quarantine. New §19.502 establishes the duration of the quarantine. New §19.503 designates quarantined areas and core areas within the quarantined areas that are subject to the quarantine, and provides for increasing or otherwise updating the quarantined areas and core areas by means of the department's web page. New §19.504 lists articles subject to the quarantine. New §19.505 provides restrictions on the movement of articles subject to the quarantine. New §19.506 provides requirements for monitoring, handling and treatment of regulated articles in a quarantined area. New §19.507 provides consequences for failure to comply with quarantine restrictions. New §19.508 provides for the appeal of action taken for failure to comply with the quarantine restrictions or requirements. New §19.509 provides procedures for handling of discrepancies or other inconsistencies in textual descriptions in this subchapter with graphic representations. The department may propose adoption of this updated quarantine on a permanent basis in a separate submission.

The new sections are adopted on an emergency basis under the Texas Agriculture Code, §71.004, which authorizes the department to establish emergency quarantines; §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances; §12.020, which authorizes the department to assess administrative penalties for violations of Chapter 71 of the Texas Agriculture Code; and the Texas Government Code, §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

§19.500. Definitions.

In addition to words and terms defined in §19.1 of this title (relating to Definitions) that may be appropriate to this subchapter, the following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Article--Any plant, insect, other organism, or substance of regulatory concern.

(2) Core area--Within a given quarantined area, any defined area surrounding a location where one or more quarantined pests have been detected. Each core area in a quarantined area is given a core area number and is bounded on all sides by a line drawn using the World Geographic Coordinate System of 1984. Core areas may be subject to requirements beyond those applicable to other parts of a quarantined area.

(3) Day degrees--A unit of measurement used to measure the amount of heat required to further the development of Mexican fruit flies through their life cycle. Day-degree life cycle requirements are calculated through a modeling process that is specific to each species.

(4) Infestation (Infest, Infested)--The presence of Mexican fruit flies or the existence of circumstances that makes it reasonable to believe that Mexican fruit flies are present.

(5) Mexican fruit fly (Mexfly)--A dangerous insect pest, *Anastrepha ludens* (Loew), that feeds destructively on fruit of many species of plants.

(6) Quarantined area (quarantined infested area, or infested area subject to the quarantine)--Any defined area designated in this subchapter or on the department's web page as having been determined by the department or by USDA to have the quarantined pest present, from which dissemination of the pest is to be prevented, and within which the pest is to be eradicated. Each quarantined area is given a name and is bounded on all sides by a line drawn using the World Geographic Coordinate System of 1984.

(7) Quarantined pest--An organism, the Mexican fruit fly, designated in this subchapter as a quarantined pest; such an organism is subject to the restrictions of this subchapter.

(8) USDA--The United States Department of Agriculture.

§19.501. Quarantined Pest.

(a) The Mexican fruit fly (Mexfly), *Anastrepha ludens*, a dangerous insect pest of the host plants listed in §19.504 of this subchapter (relating to Regulated Articles), is the quarantined pest.

(b) Basis for the quarantine. The Mexfly is not native to the United States, but is able to establish infestations in Texas and some other parts of this country through cross-border traffic and trade and by natural dispersal. Mated female Mexflies oviposit in fruit, and resulting larvae feed on the flesh of the fruit, thereby making the fruit unmarketable. The department, many other states, and the USDA consider the Mexican fruit fly to be a serious plant pest whose control and eventual eradication from quarantined areas is imperative.

(c) The department is authorized by the Texas Agriculture Code, §71.002, to establish a quarantine against the dangerous insect pest identified in this section.

§19.502. Duration of the Quarantine.

The quarantine established by this subchapter shall remain in effect until it expires or until the quarantined pest described in §19.501 of this subchapter (relating to the Quarantined Pest) is eradicated. The quarantined pest shall be considered eradicated from the quarantined area when no additional Mexican fruit flies are detected for a time period equal to three consecutive generations after the most recent detection. For the Mexican fruit fly, one generation is the number of days required to complete a reproductive cycle. Because the length of a reproductive cycle is temperature dependent, a day-degree model will be used to calculate the duration of each consecutive generation.

§19.503. Infested Geographical Areas Subject to the Quarantine.

(a) Quarantined areas. All areas designated as quarantined areas on the department's web page, are declared to be quarantined areas.

(b) Core areas. All areas designated as core areas on the department's web page are declared to be core areas.

(c) New or revised quarantined infested areas or core areas. On the basis of new or revised information, the department may augment, diminish, fuse, eliminate, rename or otherwise modify quarantined areas and core areas, and may designate additional quarantined areas or core areas.

(1) Designation or modification of a quarantined area or a core area is effective upon the posting of the notification of the quarantined area or core area on the department's website (<http://www.TexasAgriculture.gov>).

(2) Notification shall consist in the posting on the department's web page of a map and a description of each affected quarantined area or core area.

(3) A printed copy of any current notifications or of this quarantine will be made available at the department's Valley Regional Office, 900-B, East Expressway 83, San Juan, Texas 78217, (956) 787-8866. Supplemental information also may be available on the department's web page (<http://www.TexasAgriculture.gov>) and through press releases by the department.

§19.504. Regulated Articles.

An article subject to the quarantine, or regulated article, is an item the handling of which is controlled, regulated, or restricted by Chapter 71 of the Texas Agriculture Code, this subchapter, and any departmental orders issued pursuant to these rules and Chapter 71, in order to prevent dissemination of the dangerous insect pest to areas located outside a quarantined infested area or into a quarantined non-infested area. The following articles are subject to the quarantine.

(1) The Mexican fruit fly;

(2) The fruit, at any stage of development, of any of the following plants, listed by common name with genus and species in parentheses, when grown, harvested, processed, or otherwise handled within or transported through the quarantined area:

(A) Apple (*Malus domestica*);

(B) Apricot (*Prunus armeniaca*);

(C) Avocado (*Persea americana*);

(D) Calamondin orange (*X Citrofortunella mitis*);

(E) Cherimoya (*Annona cherimola*);

(F) Citrus citron (*Citrus medica*);

(G) Custard apple (*Annona reticulata*);

(H) Grapefruit (*Citrus paradisi*);

(I) Guava (*Pisidium guajava*);

(J) Japanese plum (*Prunus salicina*);

(K) Lemon (*Citrus limon*) except Eureka, Lisbon, and Vila Franca cultivars (smooth skinned sour lemon);

(L) Lime (*Citrus aurantifolia*);

(M) Mammy-apple (*Mammea americana*);

(N) Mandarin orange (tangerine) (*Citrus reticulata*);

(O) Mango (*Mangifera indica*);

(P) Nectarine (*Prunus persica*);

(Q) Peach (*Prunus persica*);

(R) Pear (*Pyrus communis*);

(S) Plum (*Prunus americana*);

(T) Pomegranate (*Punica granatum*);

(U) Prune, plum (*Prunus domestica*);

(V) Pummelo (shaddock) (*Citrus maxima*);

(W) Quince (*Cydonia oblonga*);

(X) Rose apple (*Syzygium jambos*) (Eugenia jambos);

(Y) Sour orange (*Citrus aurantium*);

(Z) Sapote (*Casimiroa* spp.);

(AA) Sapota, sapodilla (Sapotaceae);

(BB) Sargentia, yellow chapote (*Sargentia greggii*);

(CC) Spanish plum, purple mombin or ciruela (*Spondias* spp.);

(DD) Sweet orange (*Citrus sinensis*);

(3) any other fruit capable of hosting, harboring, propagating, or disseminating the Mexican fruit fly;

(4) the producing plant if it has one or more fruits listed in paragraph (2) of this section attached to or growing from it; and

(5) any article, item, conveyance, or thing on or in which the Mexican fruit fly is actually found.

§19.505. Restrictions on Movement of Articles Subject to the Quarantine.

(a) In General.

(1) A regulated article originating within a quarantined infested area may not be moved outside the infested area except as otherwise provided by this subchapter.

(2) In order to prevent the movement of regulated articles, including the dangerous insect pest, from a quarantined area into a non-quarantined area, as required by the Texas Agriculture Code, §71.005(a), a person that transports a regulated article through or within an infested area using a motor vehicle, railcar, or other conveyance capable of transporting the regulated article outside the infested area, is subject to the requirements of subsection (c) of this section.

(b) Conditions Under Which Regulated Articles May Be Moved Out of an Infested Area. Plants that are regulated articles shall not be moved outside the quarantined infested area with fruit attached. Detached fruit originating within a quarantined infested area may be moved outside the infested area if:

(1) the fruit is covered by a tarpaulin or other approved covering and taken directly to and segregated in an approved packing house or other approved treatment facility and fumigated as prescribed in the Texas Rio Grande Valley Mexican Fruit Fly Protocol 2010-2011 Harvest Season, a copy of which may be obtained at the department's Valley Regional Office, 900-B East Expressway 82, San Juan, Texas 78598, (956) 787-8866, and the fruit is accompanied by a copy of all documentation of origin or treatment required by this subchapter or a compliance agreement with the department or USDA;

(2) the grower has entered into a compliance agreement with the department or the USDA, the fruit has been treated and is being handled in accordance with the requirements set forth in the compliance agreement (at the time this subchapter is published, a compliance agreement requires use of approved bait sprays at 10 to 12 day intervals, or a shorter or longer period upon receipt of written notice from the department or the USDA of the modified treatment interval, starting at least 30 days before harvest and continued through the harvest period), and the fruit is accompanied by all documentation of origin or treatment required by this subchapter or a compliance agreement with the department or USDA; or

(3) the fruit is to be moved outside the quarantined area for juicing and the fruit is covered by a tarpaulin or other approved covering and accompanied by all documentation of origin or treatment

required by this subchapter or a compliance agreement with the department or USDA.

(c) Requirements for Transporters of Regulated Articles Within or Through an Infested Area.

(1) A person who transports a regulated article within or through an infested area using a motor vehicle, railcar, other conveyance, or equipment capable of transporting the regulated article outside the infested area shall take the following precautions to ensure that the dangerous insect pest is not disseminated outside the quarantined area and that non-infested regulated articles do not become infested by virtue of transport within or through the infested area: if carried in a part of the conveyance or equipment that is open to the outside environment, detached fruit must be covered by a tarpaulin, plastic sheet, or other covering sufficient to prevent the Mexican fruit fly from contacting the fruit; regulated articles other than detached fruit shall not be moved within or through the quarantined area unless handled in accordance with the provisions of a written notice issued by the department or the USDA or a written compliance agreement between the person and the department or the USDA.

(2) Regulated articles originating outside the quarantined area and transported through the quarantined area in an open part of a conveyance or piece of equipment and without an appropriate covering shall be treated the same under this subchapter as regulated articles originating in the quarantined area and shall be handled according to the procedures described in subsection (b) of this section and elsewhere in this subchapter.

§19.506. Monitoring, Handling and Treatment of Regulated Articles.

(a) A regulated article located within a core area shall be monitored, handled, and treated by ground or aerial sprays, as prescribed in a written notice issued by the department or the USDA or as specified in a written compliance agreement between the owner or person in control of the regulated article or the property on which the regulated article is located.

(b) The owner or manager of an orchard, other commercial fruit operation, or nursery subject to quarantine requirements may be required to bear all treatment expenses.

(c) Homeowners located in the core areas who enter into a written compliance agreement with the department or the USDA shall not be required to pay treatment expenses for fruit or fruit trees grown, harvested, or found on their residential property, unless the fruit or fruit tree is transported to the residential property from an orchard, other commercial fruit operation, or nursery owned or operated by the homeowner or at which the homeowner is employed, at a time during which the quarantine is in effect.

(d) Unless otherwise specified in a written notice issued by the department or the USDA or in a written compliance agreement between the person and the department or the USDA, a wholesaler, fruit retailer, street fruit vendor, or flea market stall operator located within the quarantined area shall cover or enclose detached fruit with air curtains, screens of appropriate mesh, plastic sheets, boxes without holes or other openings, or tarpaulins.

(e) A person who within the quarantined area is holding or displaying for sale or distribution a plant that is a regulated article shall ensure that each such plant is free from fruit at all times prior to sale or distribution.

§19.507. Consequences for Failure to Comply with Quarantine Restrictions.

A person who fails to comply with quarantine restrictions or requirements or a department order relating to the quarantine may be subject to administrative penalties not to exceed \$5,000 per occurrence,

civil penalties not to exceed \$10,000 per occurrence, or criminal prosecution. Each day a violation occurs or continues may be considered a separate occurrence. Additionally, the department is authorized to seize and treat or destroy, or order to be treated or destroyed, any quarantined article that is found to be infested with the quarantined pest or, regardless whether infested or not, transported out of or through the quarantined area in violation of this subchapter. Treatment, destruction, storage, or other charges, including those incurred by the department, are chargeable to the owner of the quarantined article to be treated or destroyed.

§19.508. Appeal of Department Action Taken for Failure to Comply with Quarantine Restrictions.

An order under the quarantine may be appealed according to procedures set forth in the Texas Agriculture Code, §71.010.

§19.509. Conflicts Between Graphical Representations and Textual Descriptions; Other Inconsistencies.

(a) In the event that discrepancies exist between graphical representations and textual descriptions in this subchapter, the representation or description creating the larger geographical area or more stringent requirements regarding the handling or movement of quarantined articles shall control.

(b) The textual description of the insect pest shall control over any graphical representation of the same.

(c) Where otherwise clear as to intent, the mistyping of a scientific or common name in this subchapter shall not be grounds for avoiding the requirements of this subchapter.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 23, 2014.

TRD-201400279

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective date: January 23, 2014

Expiration date: May 22, 2014

For further information, please call: (512) 463-4075



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 353. MEDICAID MANAGED CARE SUBCHAPTER E. STANDARDS FOR MEDICAID MANAGED CARE

1 TAC §353.405

The Texas Health and Human Services Commission (HHSC) proposes to amend §353.405, concerning Marketing.

Background and Justification

Senate Bill 8, 83rd Legislature, Regular Session, 2013, prohibits certain kinds of provider marketing activities under Medicaid fee-for-service, Medicaid managed care, and the Children's Health Insurance Program (CHIP). The bill prohibits marketing activities that: involve unsolicited personal contact with a client or parent whose child is enrolled in Medicaid or CHIP; are directed at the client or parent because they receive or have a child enrolled in Medicaid or CHIP; and are intended to influence the choice of provider. The bill directs HHSC to adopt rules to enforce these provisions. The bill also specifically allows some marketing activities.

HHSC proposes to amend §353.405 to clarify that managed care organizations (MCOs) are allowed to assist their existing clients with reapplication and allow STAR+PLUS providers to educate clients about the availability of long-term care services and supports, if the activities are permitted by the provider's contract. Additionally, amended §353.405 includes a reference to proposed new §354.1452, which specifies the types of provider marketing activities that are prohibited as well as those that are considered permissible and extends the provider marketing requirements to providers under Medicaid managed care and CHIP.

Section-by-Section Summary

Proposed amended §353.405(d)(1) clarifies that MCOs may assist their current members with reapplication.

Proposed new §353.405(e) requires Medicaid MCO network providers to comply with the standards described in new 1 TAC §354.1452, relating to provider marketing.

Proposed new §353.405(f) allows MCO network providers that participate in the STAR+PLUS program to engage in marketing activities intended to educate clients about availability of long-term care services and supports, if the activities are permitted by the provider's contract.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for each year of the first five years the proposed amendment will be in effect, enforcing or administering the amendment does not have foreseeable implications relating to costs or revenues of the state or local governments.

Small Business and Micro-business Impact Analysis

Ms. Rymal has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendment, because the amendment will not require them to alter their business practices.

Cost to Persons and Effect on Local Economies

HHSC anticipates that there will not be an economic cost to persons who are required to comply with the amendment. This proposal will not affect a local economy.

Public Benefit and Costs

Chris Traylor, Chief Deputy Commissioner, has determined that, for each year of the first five years the amendment will be in effect, the public benefit expected as a result of adopting the proposed amendment is that Medicaid clients and parents of Medicaid clients will be protected from marketing activities that are intended to influence choice of provider.

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 risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her real property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Texas Government Code.

Public Comment

Written comments on the proposal may be submitted to Jimmy Perez, Texas Health and Human Services Commission, Medicaid/CHIP Policy Development, MC-H310, Brown Heatly Building, 4900 N. Lamar Boulevard, Austin, Texas 78751; by fax to (512) 730-7472; or by e-mail to Jimmy.Perez@hhsc.state.tx.us, within 30 days after publication of this proposal in the *Texas Register*.

Public Hearing

A public hearing is scheduled for March 11, 2014, from 11:00 a.m. to noon (central time) at the Brown-Heatly Building, Public Hearing Room, located at 4900 North Lamar Boulevard, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Leigh Van Kirk at (512) 462-6284.

Statutory Authority

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

The amendment affects the Texas Human Resources Code, Chapter 32, and the Texas Government Code, Chapters 531 and 533. No other statutes, articles, or codes are affected by this proposal.

§353.405. *Marketing.*

(a) Managed care organizations (MCOs) must submit a marketing plan and all marketing materials to the Health and Human Services Commission (HHSC) for prior written approval.

(b) MCOs may present their marketing materials to eligible Medicaid clients through any method or media determined to be acceptable by HHSC. The media may include: written materials, such as brochures, posters, or fliers, which can be mailed directly to the client or left at HHSC eligibility offices; enrollment events; and public service announcements on radio.

(c) MCO enrollment or marketing representatives are required to complete HHSC's marketing orientation and training program prior to engaging in marketing activities on behalf of the MCO.

(d) Prohibited marketing practices.

(1) MCOs and providers must not conduct any direct contact marketing except through enrollment events or when assisting the MCO's current members with reapplication.

(2) MCOs and providers must not make any written or oral statement containing material misrepresentations of fact or law relating to their plan or the Medicaid managed care program.

(3) MCOs and providers must not make false, misleading or inaccurate statements relating to services or benefits, providers, or potential providers through their plan.

(4) MCOs and providers must not offer Medicaid recipients material or financial gain as an inducement for enrollment, unless an exception is made by HHSC.

(5) Marketing or enrollment practices of MCOs and providers must not discriminate against a client because of a client's race, creed, age, color, religion, national origin, ancestry, marital status, sexual orientation, physical or mental disability, health status, or existing need for medical care.

(e) MCO network providers must comply with the standards described in §354.1452 of this title (relating to Provider Marketing).

(f) Nothing in this section prohibits a provider participating in the STAR+PLUS program from, as permitted under the provider's contract, engaging in a marketing activity, including any dissemination of material or other attempt to communicate, that is intended to educate a Medicaid client about available long-term care services and supports.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2014.

TRD-201400306

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: March 9, 2014

For further information, please call: (512) 424-6900



CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER B. GENERAL PROVISIONS

1 TAC §354.1452

The Texas Health and Human Services Commission (HHSC) proposes new §354.1452, concerning Provider Marketing.

Background and Justification

Senate Bill 8, 83rd Legislature, Regular Session, 2013, prohibits certain kinds of provider marketing activities under Medicaid fee-for-service, Medicaid managed care, and the Children's Health Insurance Program (CHIP). The bill prohibits marketing activities that: involve unsolicited personal contact with a client or parent whose child is enrolled in Medicaid or CHIP; are directed at the client or parent because they receive or have a child enrolled in Medicaid or CHIP; and are intended to influence the choice of provider.

The bill does not prohibit a managed care provider from: engaging in marketing activities intended to influence the choice of provider if the activity is conducted at a community or nonprofit event that does not involve unsolicited personal contact or promotion of the provider's practice that is not used as part of health education, or involves only the general dissemination of information and not unsolicited personal contact; certain marketing activities as permitted under the provider's contract; or engaging in a marketing activity that has been submitted for review and authorized by the commission. The bill directs HHSC to adopt rules to enforce these provisions.

HHSC proposes new §354.1452 to specify the types of provider marketing that are prohibited as well as those that are considered permissible and to permit providers to submit proposed marketing materials to HHSC for review and prior authorization to ensure that the materials are in compliance with the rule. Concurrently, HHSC is proposing an amendment to §353.405 that includes a reference to this new rule, §354.1452, to extend the provider marketing requirements to providers under Medicaid managed care and CHIP.

Section-by-Section Summary

Proposed new §354.1452(a) describes the types of provider marketing activities that are prohibited.

Proposed new §354.1452(b) describes the types of provider marketing that are permissible, and defines the limited conditions under which direct marketing to clients or parents of clients may be allowed.

Proposed new §354.1452(c) describes a process by which providers may, at their option, submit proposed marketing materials to HHSC for prior approval.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for each year of the first five years the new rule will be in effect, enforcing or administering the new rule does not have foreseeable implications relating to costs or revenues of the state or local governments.

Small Business and Micro-business Impact Analysis

Ms. Rymal has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the new rule, because the new rule will not require them to alter their business practices.

Cost to Persons and Effect on Local Economies

HHSC anticipates that there will not be an economic cost to persons who are required to comply with the new rule. This proposal will not affect a local economy.

Public Benefit and Costs

Chris Traylor, Chief Deputy Commissioner, has determined that, for each year of the first five years the new rule will be in effect, the public benefit expected as a result of adopting the new rule is that Medicaid clients and parents of Medicaid clients will be protected from marketing activities that are intended to influence choice of provider.

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 risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her real property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Texas Government Code.

Public Comment

Written comments on the proposal may be submitted to Jimmy Perez, Texas Health and Human Services Commission, Medicaid/CHIP Policy Development, MC-H310, Brown Heatly Building, 4900 N. Lamar Boulevard, Austin, Texas 78751; by fax to (512) 730-7472; or by e-mail to Jimmy.Perez@hhsc.state.tx.us, within 30 days after publication of this proposal in the *Texas Register*.

Public Hearing

A public hearing is scheduled for March 11, 2014, from 11:00 a.m. to noon (central time) at the Brown-Heatly Building, Public Hearing Room, located at 4900 North Lamar Boulevard, Austin, Texas 78751. Persons requiring further information, special as-

sistance, or accommodations should contact Leigh Van Kirk at (512) 462-6284.

Statutory Authority

The new rule is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021, which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The new rule affects the Texas Human Resources Code, Chapter 32, and the Texas Government Code, Chapters 531 and 533. No other statutes, articles, or codes are affected by this proposal.

§354.1452. Provider Marketing.

(a) Prohibited marketing activities. A provider participating in the Medicaid or child health plan program, including a provider participating in the network of a managed care organization that contracts with the Health and Human Services Commission to provide services under the Medicaid or child health plan program, may not engage in any marketing activity, including any dissemination of material or other attempt to communicate, that:

(1) Involves unsolicited personal contact, including by door-to-door solicitation, solicitation at a child care facility or other type of facility, direct mail, or telephone, with a Medicaid client or a parent whose child is enrolled in the Medicaid or child health plan program;

(2) Is directed at the client or parent solely because the client or the parent's child is receiving benefits under the Medicaid or child health plan program; and

(3) Is intended to influence the client's or parent's choice of provider.

(b) Permissible marketing activities by providers participating in Medicaid or child health plan programs. Nothing in this rule prohibits a provider participating in the Medicaid or child health plan program from:

(1) Engaging in a marketing activity, including any dissemination of material or other attempt to communicate, that is intended to influence the choice of provider by a Medicaid client or a parent whose child is enrolled in the Medicaid program, if the marketing activity:

(A) Is conducted at a community-sponsored educational event, health fair, outreach activity, or other similar community or nonprofit event in which the provider participates and does not involve unsolicited personal contact or promotion of the provider's practice that is not used as part of health education; or

(B) Involves only the general dissemination of information, including by television, radio, newspaper, or billboard advertisement, and does not involve unsolicited personal contact;

(2) As permitted under the provider's contract, engaging in the dissemination of material or another attempt to communicate with a Medicaid client or a parent whose child is enrolled in the Medicaid program or child health plan program, including communication in person or by direct mail or telephone, for the purpose of:

(A) Providing an appointment reminder;

(B) Distributing promotional health materials;

(C) Providing information about the types of services offered by the provider; or

(D) Coordinating patient care; or

(3) Engaging in a marketing activity that has been submitted for review and obtained a notice of prior authorization from the Health and Human Services Commission under subsection (c) of this section.

(c) Review and prior authorization. At the provider's option, a provider participating in the Medicaid program may submit proposed marketing materials to the Health and Human Services Commission for review and prior authorization to ensure that the materials are in compliance with this rule. The Commission may grant or deny a provider's request for prior authorization.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2014.

TRD-201400307

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: March 9, 2014

For further information, please call: (512) 424-6900



CHAPTER 363. TEXAS HEALTH STEPS COMPREHENSIVE CARE PROGRAM SUBCHAPTER F. PERSONAL CARE SERVICES

1 TAC §§363.601 - 363.603, 363.605, 363.607

The Texas Health and Human Services Commission (HHSC) proposes amendments to §§363.601, 363.603, 363.605, and 363.607, and proposes new §363.602, relating to Personal Care Services provided through the Texas Health Steps Comprehensive Care Program.

Background and Justification

Personal Care Services (PCS) is a benefit available through the Texas Health Steps Comprehensive Care Program for eligible individuals who require assistance with various daily living activities and other health maintenance activities due to physical, cognitive, or behavioral limitations related to his or her disability or chronic health condition.

In September 2012 the Texas State Auditor's Office (SAO) issued a report entitled, "The Health and Human Services Commission's Administration of Home Health Services within the Texas Health Steps Program." The SAO report provides recommendations to improve program efficiencies and reduce opportunities for fraud and waste. Specific recommendations include strengthening processes for obtaining documentation to establish the need for services. In addition to the SAO report, in drafting the proposed PCS rule amendments, HHSC took into consideration the settlement agreement in *Alberto N., et al. v. Janek, et al.*

HHSC proposes amendments to align the rules with program policy for personal care services provided to individuals under the age of 21 through the Texas Health Steps Comprehensive Care Program. In addition, proposed rule changes aim to

strengthen the documentation process for establishing diagnostic information in line with the SAO recommendations.

Section-by-Section Summary

Proposed amended §363.601(c) clarifies the conditions under which personal care services are authorized. Current subsection (d) is deleted and the information is moved to new §363.607(d). The title of the rule is updated to reflect the contents.

Proposed new §363.602 provides definitions for terms used in this subchapter.

Proposed amended §363.603 updates terminology to conform to the new definitions section. Additionally, the amendments clarify existing policies.

Proposed amended §363.605 aligns benefits and limitations with program policy. Terms not included in new §363.602 have been changed to comport with the definitions sections.

Proposed subsection (b) provides additional specificity regarding additional documentation that may be requested by HHSC or the Department of State Health Services (DSHS) prior to authorization of PCS. Proposed subsection (b)(3) requires that, unless otherwise allowed via rule, a Practitioner Statement of Need (PSON) must be on file before personal care services can begin. Additionally, proposed subsection (b)(3) places restrictions on the types of providers that are qualified to sign the PSON. Proposed subsection (c) outlines evaluation criteria for the amount and duration of personal care services. Proposed subsection (f) describes the limitations on personal care services. Proposed subsection (g) provides approval and continuation requirements for personal care services. Proposed subsection (h) provides required criteria for personal care services to be terminated. Proposed subsection (i) provides the criteria for suspending personal care services.

Section 363.607 is amended to clarify that Texas Medicaid will not reimburse for personal care services that school districts are required to provide.

Throughout the rules, the term beneficiary is replaced with the term recipient, changes are made to align rules with program policy, and other language is updated to reflect current terminology.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed new and amended rules are in effect, a small cost savings to the state could result from requiring the Practitioner Statement of Need prior to the initiation of PCS. However, there is currently insufficient data to project these savings. In addition, the savings are expected to be temporary as providers adjust their time-table to provide services more rapidly under the new rules. The proposed amended rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

There is no anticipated negative impact on local employment.

Small and Micro-business Impact Analysis

HHSC has determined that there will be an effect on small businesses or micro-businesses to comply with the proposed amended and new rules. It is estimated that there are 248 home health agencies that provide personal care services that could be considered small or micro-businesses and be affected by the proposed rule change. Currently, home health agencies

can begin providing personal care services after a client has received a program assessment, but before the PERSON has been submitted. The proposed rules will prevent home health agencies from providing personal care services until the PERSON has been collected. However, HHSC estimates that the impact of this change will be minimal. PCS caseworkers will work to ensure that all necessary documentation, as required by the proposed rules, is submitted in a timely manner.

HHSC considered allowing services to begin prior to receipt of the PERSON, but determined that continuing the current policy increases opportunity for fraud and waste and undermines program integrity. This program requirement is included as a result of the September 2012 SAO report. Moreover, the requirement that the PERSON be on file prior to the initiation of services aligns with policy for other similar HHSC and the Department of Aging and Disability Services home and community-based programs.

Public Benefit and Costs

Chris Traylor, Deputy Chief Commissioner, has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit of enforcing the proposed new and amended rules is decreased fraud and waste and enhanced program integrity in the personal care services program by ensuring that individuals receive only services they truly need. Requiring timely submission of patient documentation will also require that practitioners remain engaged in their patients' care.

Ms. Rymal has determined that there are no anticipated costs to persons required to comply with the rule as there is no need to add to current business practices.

Regulatory Analysis

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

Taking Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Texas Government Code.

Public Comment

Written comments on the proposal may be submitted to Shelly Robichaux, Policy Advisor, Texas Health and Human Services Commission, Medicaid/CHIP Division, 4900 N. Lamar Boulevard, MC H600, Austin, Texas 78751; by fax to (512) 730-7472; or by e-mail to shelly.robichaux@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Public Hearing

A public hearing is scheduled for March 7, 2014 from 2:00 p.m. to 3:00 p.m. (central time) in the John H. Winters Building, Public Hearing Room 125, located at 701 W. 51st Street, Austin, Texas 78751. Persons requiring further information, special as-

sistance, or accommodations should contact Leigh A. Van Kirk at (512) 462-6284.

Statutory Authority

The amendments and new rule are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendments and new rule affect Texas Human Resources Code Chapter 32, and Texas Government Code Chapters 531 and 533. No other statutes, articles, or codes are affected by this proposal.

§363.601. *Purpose [Eligibility and Medical Necessity Criteria].*

(a) The purpose of this subchapter is to define the personal care services (PCS) benefit that is available through the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT)-Comprehensive Care Program, which in Texas is known as the Texas Health Steps-Comprehensive Care Program.

(b) PCS [Personal care services] may be provided to individuals who are under 21 years of age and eligible for EPSDT through the medical assistance program.

(c) PCS [Personal care services] are authorized for recipients who require [medically necessary when a beneficiary requires] assistance with activities of daily living (ADLs), instrumental activities of daily living (IADLs), or health maintenance activities (HMAs) [related functions] because of a physical, cognitive or behavioral limitation that is related to the recipient's [beneficiary's] disability or chronic health condition.

~~{(d) This subchapter does not apply to personal care services delivered through the School Health and Related Services program.}~~

§363.602. *Definitions.*

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

(1) Activities of Daily Living (ADL)--Activities that include, but are not limited to, eating, toileting, personal hygiene, dressing, bathing, transferring, maintaining continence, positioning, and mobility.

(2) Assessment--An evaluation conducted with the recipient and responsible adult to determine the recipient's need for services.

(3) Attendant--A person who provides direct care to a recipient.

(4) Consumer Directed Services (CDS)--A service delivery option in which a recipient or legally authorized representative employs and retains service providers and directs the delivery of program services.

(5) Cueing--Indirect intervention provided during the delivery of personal care services to prompt or instruct a recipient with a cognitive impairment or behavioral condition in the performance of ADLs or IADLs to ensure the recipient performs the task properly.

(6) Delegation--Has the meaning assigned by 22 TAC §225.4 (relating to Definitions).

(7) Dependents--Any member of a household, other than the recipient, whose care and support is the legal responsibility of the responsible adult. A dependent includes a disabled adult family member living in the household. Care and support includes meeting the medical, educational, and psycho-social needs of a dependent.

(8) Early and Periodic Screening, Diagnosis, and Treatment (EPSDT)--The child and adolescent health component of the Medicaid program for recipients under 21 years of age, defined in the United States Code, Title 42, §1396d(r), and the Code of Federal Regulations, Title 42, §440.40(b). EPSDT includes screening, vision, dental, hearing, laboratory, health care, treatment, diagnostic services and other measures necessary to correct or ameliorate defects and physical and mental illnesses and conditions. In Texas, EPSDT is referred to as Texas Health Steps (THSteps).

(9) Financial Management Services (FMS)--Services delivered by the CDS agent to an employer such as orientation, training, support, assistance with and approval of budgets, and processing payroll and payables on behalf of the employer.

(10) Financial Management Services Agency (FMSA)--An entity that contracts with the Department of Aging and Disability Services to provide financial management services (FMS).

(11) Health Maintenance Activities (HMAs)--Has the meaning assigned by 22 TAC §225.4.

(12) Home and Community Support Services Agency (HCSSA)--A public or private agency or organization that provides home and community supports and is licensed under 40 TAC Chapter 97 (relating to Licensing Standards for Home and Community Support Services Agencies).

(13) Instrumental Activities of Daily Living (IADLs)--Activities include, but are not limited to, meal preparation, grocery shopping, light housework, laundry, communication, assistance with transportation services, and for recipients over the age of 18, money management.

(14) Intervening--Direct contact or intervention provided by an attendant during the delivery of personal care services to a recipient with a physical or cognitive impairment in the performance of ADLs or IADLs to ensure the task is performed properly.

(15) Legally authorized representative (LAR)--A person authorized or required by law to act on behalf of an individual with regard to a matter described in this chapter, including a parent of a minor, guardian of a minor, managing conservator of a minor, or the guardian of an adult.

(16) Personal Care Services (PCS)--Support services provided to an EPSDT recipient who requires assistance with ADLs, IADLs, and HMAs due to physical, cognitive, or behavioral limitations related to his or her disability or chronic health condition.

(17) Practitioner--A person who is currently licensed in a state in which the person practices as a physician, advanced practice nurse, or physician assistant.

(18) Recipient--An individual who is eligible to receive services through the medical assistance program.

(19) Redirecting--Intervention provided during the delivery of PCS to divert, change direction, or give new direction to a recipient with a cognitive or behavioral impairment in the performance of ADLs or IADLs to ensure the recipient completes the task.

(20) Responsible Adult--An individual, age 18 or older, who has agreed to accept responsibility for providing food, shelter, clothing, education, nurturing, and supervision for the recipient. The term includes biological parents, adoptive parents, foster parents, legal guardians, court-appointed managing conservators or the primary adult who is acting in the role of parent or recipient.

§363.603. *Provider Participation Requirements.*

(a) Personal care services (PCS) must be provided by an individual who:

(1) Is 18 years of age or older;

(2) Is an attendant who is an employee of a provider organization licensed as a home and community support services agency (HCSSA) [as per 40 TAC Chapter 97 (relating to Licensing Standards for Home and Community Support Services Agencies) [Title 40, Part 1, Chapter 97 of the Texas Administrative Code], or an employee of the recipient, [beneficiary,] or the recipient's [beneficiary's] parent or legally authorized representative (LAR), [guardian,] if the recipient [beneficiary] is receiving PCS [personal care services] through the consumer directed services (CDS) option described in 40 TAC[.] Chapter 41 (relating to Consumer Directed Services Option);[.]

(3) Has demonstrated the competence necessary[; when competence cannot be demonstrated through education and experience,] to perform the personal assistance tasks assigned by the provider organization supervisor, the recipient, [beneficiary,] or the recipient's [beneficiary's] parent or LAR [guardian] acting as employer through the CDS option described in 40 TAC[.] Chapter 41; [(relating to Consumer Directed Services Option).]

(4) Is not the responsible adult of the recipient if the recipient is under the age of 18 [Is not a legal or foster parent, or guardian, of the beneficiary who is a minor child who receives the service]; and

(5) Is not the legal spouse of the recipient [beneficiary] who receives the service.

(b) HHSC may establish rates of reimbursement based on the level of care required by the recipient [beneficiary] and the qualifications of and tasks performed by the PCS [personal care services] attendant.

(c) An organization that employs attendants who provide PCS [providing personal care services] must meet the licensing standards set out in 40 TAC[.] Chapter 97 [(relating to Licensing Standards for Home and Community Support Services Agencies)] for one of the following license categories or special service types:

(1) Licensed Home Health Services, as set out in 40 TAC §97.401 (relating to Standards Specific to Licensed Home Health Services);

(2) Licensed and Certified Home Health Services, as set out in 40 TAC §97.402 (relating to Standards Specific to Licensed and Certified Home Health Services); or

(3) Agencies licensed to provide personal assistance services, as set out in 40 TAC §97.404 (relating to Standards Specific to Agencies Licensed to Provide Personal Assistance Services).

(d) An organization serving as a Financial Management Services Agency (FMSA) [Consumer Directed Services Agency (CDSA)], providing financial management services and other employer support services to a recipient [client] receiving PCS [personal care services] through the CDS option [modality], must meet the FMSA [CDSA] contracting requirements specified in 40 TAC Chapters 41 and 49 (relating to Consumer Directed Services Option and Contracting for Community Care Services).

(e) Provider organizations and FMSAs [CDSAs], must successfully enroll as a Texas Medicaid provider prior to seeking authorization or payment for PCS [personal care services].

§363.605. *Benefits and Limitations.*

{(a) Personal care services are support services provided to an EPSDT beneficiary who requires assistance with activities of daily living (ADLs), instrumental activities of daily living (IADLs), and health

related functions due to physical, cognitive, or behavioral limitations related to his or her disability or chronic health condition.]

(a) [(b)] Personal care services (PCS) [may] include:

(1) Assistance with Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs);

(2) Nurse-delegated tasks and Health Maintenance Activities (HMAs) as permitted by program policy and 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks not Requiring Delegation in Independent Living Environments for Client's with Stable and Predictable Conditions); and

[(1) ADLs that include, but are not limited to, eating; toiletting, grooming, dressing, bathing, transferring, maintaining continence, positioning; and mobility.]

[(2) IADLs that include, but are not limited to, personal hygiene, meal preparation, grocery shopping, light housework, laundry, communication, transportation, and money management.]

[(3) Health-related functions that include, but are not limited to, medication management, range of motion, exercise, skin care, use of durable medical equipment, reporting the beneficiary's condition, including changes to the beneficiary's condition or needs, and completing appropriate records.]

[(4) Nurse-delegated tasks, including health maintenance activities, as permitted by the Texas Nursing Practice Act and its implementing regulations; and]

(3) [(5)] Hands-on assistance, cueing, redirecting, or intervening, to accomplish the approved PCS task.

(b) [(e)] Prior to authorizing PCS [personal care services], HHSC [or its designee] will require completion of:

(1) An assessment of the recipient [beneficiary] with an HHSC-approved assessment form; [and]

(2) Additional [Any other] documentation required by HHSC to support the need for PCS and complete the authorization process; and [-]

(3) [(4)] An HHSC-approved Practitioner Statement of Need (PSON) [written statement of need] by a practitioner who is known by and has an ongoing clinical relationship with the recipient and familiarity with the recipient's diagnosis. [the beneficiary's physician or usual source of care (i.e., a practitioner with ongoing clinical knowledge of, and a therapeutic relationship with, the beneficiary) must be on file with HHSC or its designee within 60 days of the initial start of care.]

(A) The PSON must be on file with HHSC prior to the initiation of PCS.

(B) If a recipient or intended recipient is entering or is in the conservatorship of the state, PCS may be provisionally initiated for up to 60 days once eligibility has been established through the assessment.

(C) HHSC will accept the PSON only if:

(i) The individual who completes the PSON is a physician, advanced practice registered nurse, or physician assistant; and

(ii) Unless otherwise authorized by HHSC, the practitioner is a Medicaid enrolled provider.

(c) [(e)] In evaluating the request for PCS [personal care services], HHSC [or its designee] will determine the amount and duration of PCS [personal care services] by taking into account the following:

(1) Whether the recipient [beneficiary] has a physical, cognitive, or behavioral limitation related to a disability or chronic health condition that inhibits the recipient's [beneficiary's] ability to accomplish ADLs, IADLs, or HMAs [related health functions];

(2) The responsible adult's [parent/guardian's] need to sleep, work, attend school, and meet their own medical needs;

(3) The responsible adult's [parent/guardian's] legal obligation to care for, support, and meet the medical, educational, and psycho-social needs of their other dependents;

(4) The responsible adult's [parent/guardian's] physical ability to perform the personal care services; [and]

(5) Whether requiring the responsible adult to perform the personal care services will put the recipient's health or safety in jeopardy;

(6) The time periods during which the personal care service tasks are required by the recipient, as they occur over the course of a 24-hour day, and a 7-day week;

(7) [(5)] Whether or not the need to assist the family in performing personal care services on behalf of the recipient [client] is related to a medical, cognitive, or behavioral condition that results in a level of functional ability that is below that expected of a typically developing child of the same chronological age; and [-]

(8) Whether services are needed based on:

(A) the PSON; and

(B) the recipient's personal care assessment.

(d) [(f)] HHSC will not arbitrarily deny authorization of PCS [personal care services] or reduce the number of requested hours of services based solely on the recipient's [client's] diagnosis, type of illness, or condition.

(e) [(g)] A recipient [beneficiary] may receive PCS [personal care services] through the Consumer Directed Services (CDS) option defined in 40 TAC[-] Chapter 41 (relating to Consumer Directed Services Option).

(f) [(h)] PCS [Personal care services] limitations include the following:

(1) HHSC or its designee will not reimburse for PCS [personal care services] used for or intended to provide:

(A) Respite care; [or]

(B) Child care; or [-]

(C) Restraining of a recipient.

(2) PCS [Personal care services] shall neither replace the responsible adult [parents or guardians] as the primary care giver, nor provide all the care a recipient [beneficiary] requires to live at home. Primary care givers remain responsible for a substantial portion of a recipient's [beneficiary's] daily care, and PCS [personal care services] are intended to support the care of the recipient [beneficiary] living at home.

(3) PCS will not be authorized to overlap with duplicative services provided by another Medicaid program or a Medicaid waiver program.

(4) PCS may be authorized for a provider to recipient ratio greater than one-on-one in settings in which PCS are provided in homes with more than one recipient receiving PCS, foster care services, and/or independent living arrangements per program policy.

(5) PCS do not include the payment for transportation services available through the Medical Transportation Program (MTP).

(g) HHSC will require the reassessment of the recipient's need for PCS every 12 months, or when requested due to a change in the recipient's health or living condition. A new PSOSN will be required at each annual reassessment. If a reassessment is requested, due to a change in the recipient's health condition, a new PSOSN indicating a the change in the recipient's functional need or condition must be submitted.

(h) [(i)] Authorization for PCS [personal care services] will be terminated by HHSC or its designee when:

(1) The recipient [beneficiary] is no longer eligible for Texas Medicaid;

(2) The recipient [beneficiary] no longer meets the [medical necessity] criteria for PCS [personal care services];

(3) The place of service(s) can no longer meet the recipient's [beneficiary's] health and safety needs; or

[(4) The provider requests termination due to the beneficiary's lack of compliance with the service plan; or]

(4) [(5)] The authorization for PCS [personal care services] expires.

(i) Authorization for PCS may be suspended by HHSC or its designee when:

(1) The recipient or their family creates an unsafe environment for the attendant's health and safety; or

(2) The provider requests suspension for reasons as outlined in PCS program policy.

(j) A recipient [beneficiary] may request a fair hearing in the event that PCS [personal care services] are denied, reduced, suspended or terminated, as per Chapter 357 of this title (relating to Hearings).

§363.607. *Place of Service.*

(a) Personal care services (PCS) may be provided in an individual or group setting.

(b) PCS [Personal care services] may be authorized for the following place(s) of service:

- (1) The recipient's [beneficiary's] home;
- (2) The home of the primary or alternate care giver;
- (3) The recipient's [beneficiary's] school;
- (4) The recipient's [beneficiary's] day care facility; or
- (5) Any community setting in which the recipient [beneficiary] is located.

(c) PCS [Personal care services] may not be authorized in hospitals, nursing facilities, or intermediate care facilities for individuals with intellectual or developmental disabilities [the mentally retarded; or institutions for mental disease].

(d) Texas Medicaid does not reimburse providers for PCS that duplicate services that are the legal responsibility of school districts. The school district, through the Individuals with Disabilities Education Act (IDEA), is required to meet the recipient's personal care needs while the recipient is at school. If those needs cannot be met by the

school district, the school district must submit documentation to the Department of State Health Services case manager indicating the school district is unable to provide necessary services.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2014.

TRD-201400308

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: March 9, 2014

For further information, please call: (512) 424-6900



TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) proposes amendments to §25.53, relating to Electric Service Emergency Operations Plans, and §25.362, relating to Electric Reliability Council of Texas (ERCOT) Governance. The proposed amendments will address developments and experience since §25.53 was amended in 2007, including drought issues and the Report on Extreme Weather Preparedness Best Practices prepared by Quanta Technologies, LLC for the commission pursuant to Texas Utilities Code §186.007. Project Number 39160 is assigned to this proceeding.

Regina Erales, Reliability and Emergency Management Coordinator, Infrastructure and Reliability Division, has determined that for each year of the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Ms. Erales has determined that for each year of the first five years the proposed amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be an increased level of preparedness on the part of electric utilities, power generation companies (PGCs), and electric cooperatives to address issues resulting from emergency situations; and authorizing ERCOT to conduct generator site visits to review compliance with weatherization plans and to obtain from generators information concerning water supplies in order to assess drought impacts. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the amendments. Therefore, no regulatory flexibility analysis is required. There will be limited economic costs to persons who are required to comply with the amendments as proposed. The amendments will require electric utilities, PGCs, and electric cooperatives to address additional issues in their emergency operations plans and prepare after action or lessons learned reports in some cases; require certain electric utility personnel to receive

certain emergency management training; and require generators to participate in ERCOT-conducted site visits to review compliance with weatherization plans and to provide information to ERCOT concerning water supplies for generation purposes, including contracts, water rights, and other information. The economic compliance costs will consist of the time needed to comply with the amendments and will vary largely based on the extent to which an affected person has already addressed the requirements contained in the amendments as part of its self-initiated emergency preparedness activities. The public benefit anticipated as a result of enforcing the amendments is expected to substantially outweigh the economic compliance costs.

Ms. Eralles has also determined that for each year of the first five years the proposed amendments will be in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

Initial comments on the proposed amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by Monday, March 10, 2014. Reply comments may be submitted by Tuesday, March 25, 2014. Sixteen copies of comments on the proposed amendments are required to be filed pursuant to 16 TAC §22.71(c). Comments should be organized in a manner consistent with the organization of the proposed amended rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed amendments. The commission will consider the costs and benefits in deciding whether to adopt the amendments. All comments should refer to Project Number 39160.

The commission staff will conduct a public hearing on this rule-making, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, on March 26, 2014 at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78711. The request for a public hearing must be received by March 14, 2014.

SUBCHAPTER C. INFRASTRUCTURE AND RELIABILITY

16 TAC §25.53

The amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated (West 2007 and Supp. 2013) (PURA) §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied to carry out that power; §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §14.003, which provides the commission with the authority to require a public utility to file a report regarding information related to the utility and to establish the form, time, and frequency of the report; §14.151, which provides the commission with the authority to prescribe the form of the records to be kept by a public utility; §14.153, which provides the commission with the authority to adopt rules governing the communication between the regulatory authority and the public utility; §31.001, which states that PURA Subtitle B was enacted to protect the public interest in establishing an adequate regulatory system to assure operations and services that are just and reasonable; §37.001, which defines an electric utility to include an electric cooperative for

purposes of Chapter 37; §37.151, which provides that a certificate holder shall serve all customers within the certificated area and shall provide continuous and adequate service within that certificated area; §38.001, which provides that electric utilities and electric cooperatives shall furnish service that is safe, adequate, efficient, and reasonable; §38.002, which provides the commission with the authority to adopt reasonable standards for an electric utility to follow, to adopt rules for examining, testing, and measuring a service, and to adopt rules to ensure the accuracy of equipment; §38.005, which requires the commission to implement service quality and reliability standards relating to the delivery of electricity to retail customers, and requires electric utilities to maintain adequately trained and experienced personnel so that the utility may comply with the standards; §38.071, which provides the commission with authority to order an electric utility to provide improvements in its service; §39.101, which provides the commission with the authority to ensure that customer protections are established to entitle a customer to safe, reliable, and reasonably priced electricity; §39.151(a)(2), which requires a power region to establish an independent organization to ensure the reliability and adequacy of the regional electrical networks; §39.151(d), which requires the commission to adopt and enforce rules relating to the reliability of the regional electrical network or delegate to an independent organization responsibilities for establishing or enforcing such rules; §39.151(j), which requires a retail electric provider (REP), municipally owned utility, electric cooperative, power marketer, transmission and distribution utility, or PGC to observe all scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures established by the independent system operator in ERCOT; §39.351, which requires a PGC to provide information required by commission rule and comply with the reliability standards adopted by an independent organization; §39.352, which requires a REP to demonstrate the financial and technical resources to provide continuous and reliable service and the resources needed to meet PURA's customer protection requirements, and to comply with all customer protection guidelines established by the commission and PURA, and §41.004, which provides the commission with jurisdiction to require electric cooperatives to report to the commission to the extent necessary to ensure the public safety.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.003, 14.151, 14.153, 31.001, 37.001, 37.151, 38.001, 38.002, 38.005, 38.071, 39.101, 39.151, 39.351, 39.352, and 41.004.

§25.53. *Electric Service Emergency Operations Plans.*

(a) Application. This section applies [Unless the context clearly indicates otherwise, this section is applicable] to electric utilities (including[;] transmission and distribution utilities) [(TDUs), power generation companies (PGCs), retail electric providers (REPs), and the Electric Reliability Council of Texas (ERCOT), collectively referred to as "market entities," and electric cooperatives. The commission intends that a market entity or electric cooperative apply the requirements of this section in a manner that is appropriate to its particular circumstances. [(“cooperatives”) and shall refer to the definitions provided in the Public Utility Regulatory Act §11.003 and §31.002. For the purposes of this section, market entities and cooperatives are those operating within the State of Texas.]

(b) Filing requirements. A [Each] market entity shall file with the commission a copy of its emergency operations plan or a comprehensive summary of its emergency operations plan. A new market entity shall file with the commission a copy of its plan or a comprehensive summary before it begins commercial operations. If an electric

utility, REP, or ERCOT makes a significant change to its plan, it shall file the revised plan or a revision to the comprehensive summary that appropriately addresses the change to the plan no later than 30 days after the change takes effect. If a PGC makes a significant change to its plan that occurs during the time period November 1 through April 30, it shall file that change by June 1 and for a significant change that occurs during the time period May 1 through October 31, it shall file that change by December 1. A significant change includes but is not limited to a change that has a material impact on how the market entity would respond to an emergency~~;~~ as required in subsection (e) of this section, by May 1, 2008. To the extent significant changes are made to an emergency operations plan, the market entity shall file the revised plan or a revision to the comprehensive summary that appropriately addresses the changes to the plan no later than 30 days after such changes take effect].

(c) Information to be included in the emergency operations plan.

(1) ~~An electric utility shall include in its [TDUs and electric utilities shall include in their]~~ emergency operations plans, but ~~is [are]~~ not limited to, the following:

(A) A registry of critical load customers, as defined in §25.497(a)(1) - (4) of this title (relating to Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers, and Chronic Condition Residential Customers [~~Critical Care Customers~~]), directly served. This registry shall be updated as necessary but, at a minimum, annually. The description filed with the commission shall include the location of the registry, the process for maintaining an accurate registry, the process for providing assistance to critical load customers in the event of an unplanned outage, the process for communicating with the critical load customers, and ~~the [a]~~ process for training staff with respect to serving critical load customers.~~;~~

(B) A communications plan that describes the procedures for communicating with the public, ~~[contacting the]~~ media, customers, and critical load customers directly served as soon as reasonably possible either before or at the onset of an emergency affecting electric service. The communications plan shall ~~[should]~~ also address ~~the electric utility's [its]~~ telephone system and complaint-handling procedures during an emergency.~~;~~

(C) Curtailment priorities, procedures for shedding load, rotating outages ~~[black-outs]~~, and planned interruptions.~~;~~

(D) Priorities for restoration of service.~~;~~

(E) A plan to ensure continuous and adequate service during a pandemic.~~;~~ ~~and]~~

(F) A plan that addresses wildfire mitigation efforts.

(G) A plan for identification of potentially severe weather events, including but not limited to tornadoes, hurricanes, severely cold weather, severely hot weather, and flooding.

(H) A plan for the inventory of pre-arranged supplies for emergencies.

(I) A plan that addresses staffing during severe weather events.

(J) ~~[(F)]~~ A hurricane plan, including evacuation and re-entry procedures (if facilities are located within a hurricane evacuation zone, as defined by the Texas Department of Public Safety's Texas [Governor's] Division of Emergency Management (TDEM)).

~~[(G)]~~ Following the annual drill, the utility shall assess the effectiveness of the drill and modify its emergency operations plan as needed.~~]~~

(K) ~~[(H)]~~ An affidavit from the electric utility's operations officer affirming that all relevant operating personnel of the electric utility ~~[market entity's operations officer indicating that all relevant operating personnel within the market entity]~~ are familiar with the contents of the emergency operations plan; and such personnel are committed to following the plan ~~[and the provisions contained therein in the event of a system-wide or local emergency that arises from natural or manmade disasters]~~ except to the extent deviations are appropriate under the circumstances during the course of an emergency.

(L) An affidavit from the electric utility that states that its emergency management personnel who are designated to interact with local, state, and federal emergency management officials during emergency events have received Federal Emergency Management Agency (FEMA) National Incident Management System (NIMS) training, specifically IS-700.a, IS 800.b, IS-100.b, and IS-200.b.

(2) An electric utility that operates an electric generation facility or a PGC shall include in its emergency operations plan for its generation facilities, but is ~~[Electric utilities that own or operate electric generation facilities and PGCs shall include in their emergency operations plans, but are]~~ not limited to, the following:

(A) A plan that addresses severely cold weather and severely hot weather. ~~[summary of power plant weatherization plans and procedures;]~~

(B) A plan that addresses critical failure points, including any effects of weather design limits.

(C) A plan that addresses an emergency shortage of water.

(D) A plan for identification of potentially severe weather events, including but not limited to tornadoes, hurricanes, severely cold weather, severely hot weather, and flooding.

(E) A plan for the inventory of pre-arranged supplies for emergencies.

(F) A plan that addresses staffing during severe weather events.

(G) Checklists for generating facility personnel to address emergency events.

(H) ~~[(B)]~~ A summary of alternative fuel and storage capacity.~~;~~

(I) A plan for alternative fuel testing if the facility has the ability to utilize alternative fuels.

(J) ~~[(C)]~~ Priorities for recovery of generation capacity.~~;~~

(K) ~~[(D)]~~ A pandemic preparedness plan.~~;~~ ~~and]~~

(L) ~~[(E)]~~ A hurricane plan, including evacuation and re-entry procedures (if facilities are located within a hurricane evacuation zone, as defined by the TDEM [Governor's Division of Emergency Management]).

(M) ~~[(F)]~~ An affidavit from the PGC's ~~[market entity's]~~ operations officer affirming ~~[indicating]~~ that all relevant operating personnel ~~of [within]~~ the market entity are familiar with the contents of the emergency operations plan; and such personnel are committed to following the plan ~~[and the provisions contained therein in the event of a system-wide or local emergency that arises from natural or manmade disasters]~~ except to the extent deviations are appropriate under the circumstances during the course of an emergency.

~~{(G) Following the annual drill, the utility shall assess the effectiveness of the drill and modify its emergency operations plan as needed.}~~

(3) A REP shall include in its emergency operations plan, but is not limited to, an affidavit from an officer of the REP affirming that the REP is prepared to implement the plan in the event of an emergency affecting the REP ~~[REPs shall include in their filing with the commission, but are not limited to, an affidavit from an officer of the REP affirming that it has a plan that addresses business continuity should its normal operations be disrupted by a natural or manmade disaster, a pandemic, or a State Operations Center (SOC) declared event].~~

(4) ERCOT shall include in its emergency operations plan ~~[filing with the commission]~~, but is not limited to, an affidavit from its ~~[a senior]~~ operations officer affirming the following:

(A) ERCOT maintains crisis communications procedures that address communicating with the public, media, governmental entities, and market participants concerning events that affect the bulk electric system ~~[Crisis Communications Procedures that address procedures for contacting media, governmental entities, and market participants during events that affect the bulk electric system and normal market operations and include procedures for recovery of normal grid operations];~~

(B) ERCOT maintains a business continuity plan that addresses returning to normal operations after disruptions caused by a natural or manmade emergency ~~[disaster, or a SOC declared event]~~; and

(C) ERCOT maintains a pandemic preparedness plan.

(d) Drills. ~~A [Each] market entity shall conduct or participate in one or more drills annually [an annual drill] to test its emergency procedures if its emergency procedures have not been implemented in response to an actual event within the last 12 months. If a market entity is in a hurricane evacuation zone (as defined by TDEM), at least one of the annual drills shall include a test of its hurricane plan/storm recovery plan. Following the annual drills, the market entity shall assess the effectiveness of the drill and modify its emergency operations plan as needed. An electric utility that directly serves retail customers shall notify commission staff using the method and form prescribed by commission staff, as described on the commission's website, and the appropriate TDEM District Coordinators by email or other written form of the date, time and location at least 30 days prior to the date of at least one drill each year [the Governor's Division of Emergency Management]; this drill shall also test its hurricane plan/storm recovery plan. The commission should be notified 21 days prior to the date of the drill].~~

(e) Emergency contact information. ~~A market entity shall submit emergency contact information using the method and form prescribed by commission staff, as described on the commission's website. A market entity shall notify commission staff regarding a change to its emergency contact information within 30 days of the change [Each market entity shall submit emergency contact information in a and form prescribed by commission staff, by May 1 of each calendar year. Notification to commission staff regarding changes to its emergency contact information shall be made within 30 days. This information will be used to contact market entities prior to and during an emergency event].~~

(f) Reporting requirements. Upon request by ~~commission staff~~ during an activation of the State Operations Center (SOC) by TDEM, an affected market entity ~~[the commission or commission staff during a SOC inquiry or SOC declared emergency event, affected market entities]~~ shall provide updates on the status of operations, outages

and restoration efforts. Updates shall continue until all event-related outages are restored or unless otherwise notified by commission staff. After an emergency event declared by the Governor of the State of Texas or the President of the United States of America, commission staff may require an affected market entity to provide an after action or lessons learned report and file it with the commission by a date specified by commission staff.

(g) Copy available for inspection. A market entity shall make available a complete copy of its emergency operations plan at its main office for inspection by the commission staff upon request [A complete copy of the emergency operations plan shall be made available at the main office of each market entity for inspection by the commission or commission staff upon request].

(h) Electric cooperatives.

(1) Application. This subsection applies to an electric cooperative that operates generation, transmission, and/or distribution facilities. ~~[is applicable to electric cooperatives, as defined in the Public Utility Regulatory Act §11.003, that operates, maintains or controls in this state a facility to provide retail electric utility service or transmission service.]~~

(2) Reporting Requirements. ~~An [Each] electric cooperative shall file with the commission a copy of its emergency operations plan or a comprehensive summary of its emergency operations plan. A new electric cooperative shall file with the commission a copy of its plan or a comprehensive summary before it begins commercial operations [by May 1, 2008]. The filing shall also include an affidavit from the electric cooperative's operations officer affirming [indicating] that all relevant operating personnel of [within] the electric cooperative are familiar with the contents of the emergency operations plan; and such personnel are committed to following the plan [plans and the provisions contained therein in the event of a system-wide or local emergency that arises from natural or manmade disasters,] except to the extent deviations are appropriate under the circumstances during the course of an emergency. If an electric cooperative makes a significant change to its emergency operations plan, it shall file the revised plan or a revision to the comprehensive summary that appropriately addresses the change to the plan no later than 30 days after the change takes effect. A significant change to a plan includes, but is not limited to, a change that has a material impact on how the electric cooperative would respond to an emergency [To the extent significant changes are made to an emergency operations plan, the electric cooperative shall file the revised plan or a revision to the comprehensive summary that appropriately addresses the changes to the plan no later than 30 days after such changes take effect].~~

(3) Information to be included in the emergency operations plan. ~~An [Each] electric cooperative's emergency operations plan shall include, but is not limited to, the following:~~

(A) A registry of critical load customers, as defined in §25.497(a)(1) - (4) of this title, directly served, if maintained by the electric cooperative. This registry shall be updated as necessary but, at a minimum, annually. The description filed with the commission shall include the location of the registry, the process for maintaining an accurate registry, the process for providing assistance to critical load customers in the event of an unplanned outage, the process for communicating with the critical load customers, and ~~the [a] process for training staff with respect to serving critical load customers.[.]~~

(B) A communications plan that describes the procedures for ~~communicating with the public, [contacting] the media, customers, and critical load customers directly served as soon as reasonably possible either before or at the onset of an emergency affecting electric service. The communications plan shall also address the elec-~~

tric cooperative's [should also address its] telephone system and complaint-handling procedures during an emergency.[:]

(C) Curtailed priorities, procedures for shedding load, rotating outages [black-outs], and planned interruptions.[:]

(D) Priorities for restoration of service.[:]

(E) A plan to ensure continuous and adequate service during a pandemic.[:]

(F) A plan that addresses wildfire mitigation efforts.

(G) A plan for identification of potentially severe weather events, including but not limited to tornadoes, hurricanes, severely cold weather, severely hot weather, and flooding.

(H) A plan for the inventory of pre-arranged supplies for emergencies.

(I) A plan that addresses staffing during severe weather events.

(J) [~~F~~] A hurricane plan, including evacuation and re-entry procedures (if facilities are located within a hurricane evacuation zone, as defined by TDEM). [the Governor's Division of Emergency Management];

(K) A statement from an electric cooperative that directly serves retail customers of whether or not its emergency management personnel who are designated to interact with local, state, and federal emergency management officials during emergency events have received Federal Emergency Management Agency (FEMA) National Incident Management System (NIMS) training, specifically IS-700.a, IS 800.b, IS-100.b, and IS-200.b.

~~[(G) A summary of power plant weatherization plans and procedures;]~~

~~[(H) A summary of alternative fuel and storage capacity; and]~~

~~[(I) Priorities for recovery of generation capacity.]~~

~~[(J) Following the annual preparedness review, the electric cooperative shall assess the effectiveness of the review and modify its emergency operations plan as needed.]~~

(4) In addition to the information required by paragraph (3) of this subsection, an electric cooperative that operates an electric generation facility shall include, but is not limited to, the following information in its emergency operations plan:

(A) A plan that addresses severely cold weather and severely hot weather.

(B) A plan that addresses weather design limits and critical failure points, including any effects of weather design limits.

(C) A plan that addresses an emergency shortage of water.

(D) Checklists for generating facility personnel to address emergency events.

(E) A summary of alternative fuel and storage capacity.

(F) A plan for alternative fuel testing if the facility has the ability to utilize alternative fuels.

(G) Priorities for recovery of generation capacity.

(5) [~~4~~] Preparedness Review. An [Each] electric cooperative shall conduct one or more reviews annually [an annual review]

of its emergency procedures with key emergency operations personnel if its emergency procedures have not been implemented in response to an actual event within the last 12 months. If the electric cooperative is in a hurricane evacuation zone, at least one of the annual reviews shall include its hurricane plan/storm recovery plan. Following the annual preparedness reviews, the electric cooperative shall assess the effectiveness of the drill and modify its emergency operations plan as needed. An electric cooperative that directly serves retail customers shall notify commission staff using the method and form prescribed by commission staff, as described on the commission's website, and the appropriate TDEM District Coordinators by email or other written form, of the location, date, and time at least 30 days prior to the date of at least one review each year [this review shall also address its hurricane plan/storm recovery plan. The commission shall be notified 30 days prior to the date of the review].

(6) [~~5~~] Emergency contact information. An electric cooperative shall submit emergency contact information using the method and form prescribed by commission staff, as described on the commission's website. An electric cooperative shall notify commission staff regarding a change to its emergency contact information within 30 days of the change [Each electric cooperative shall submit emergency contact information to the commission by May 1 of each year].

(7) [~~6~~] Reporting requirements. Upon request by commission staff during an activation of the SOC by TDEM, an [the commission or commission staff during a SOC inquiry or SOC declared emergency event,] affected electric cooperative shall provide updates on the status of operations, outages, and restoration efforts. Updates shall continue until all event-related outages are restored or unless otherwise notified by commission staff. After an emergency event declared by the Governor of State of Texas or the President of the United States of America, commission staff may require an affected electric cooperative to provide an after action or lessons learned report and file it with the commission by a date specified by commission staff.

(8) [~~7~~] Copy available for inspection. An electric cooperative shall make available a complete copy of its emergency operations plan at its main office for inspection by [A complete copy of the emergency operations plan shall be made available at the main office of each electric cooperative for inspection by the commission or] commission staff upon request.

(i) Effective date. The effective date of the amendments made to this section in Project Number 39160 is March 31, 2015.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 23, 2014.

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Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

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For further information, please call: (512) 936-7223



SUBCHAPTER O. UNBUNDLING AND MARKET POWER

DIVISION 2. INDEPENDENT ORGANIZATIONS

16 TAC §25.362

The amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated (West 2007 and Supp. 2013) (PURA) §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied to carry out that power; §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §14.003, which provides the commission with the authority to require a public utility to file a report regarding information related to the utility and to establish the form, time, and frequency of the report; §14.151, which provides the commission with the authority to prescribe the form of the records to be kept by a public utility; §14.153, which provides the commission with the authority to adopt rules governing the communication between the regulatory authority and the public utility; §31.001, which states that PURA Subtitle B was enacted to protect the public interest in establishing an adequate regulatory system to assure operations and services that are just and reasonable; §37.001, which defines an electric utility to include an electric cooperative for purposes of Chapter 37; §37.151, which provides that a certificate holder shall serve all customers within the certificated area and shall provide continuous and adequate service within that certificated area; §38.001, which provides that electric utilities and electric cooperatives shall furnish service that is safe, adequate, efficient, and reasonable; §38.002, which provides the commission with the authority to adopt reasonable standards for an electric utility to follow, to adopt rules for examining, testing, and measuring a service, and to adopt rules to ensure the accuracy of equipment; §38.005, which requires the commission to implement service quality and reliability standards relating to the delivery of electricity to retail customers, and requires electric utilities to maintain adequately trained and experienced personnel so that the utility may comply with the standards; §38.071, which provides the commission with authority to order an electric utility to provide improvements in its service; §39.101, which provides the commission with the authority to ensure that customer protections are established to entitle a customer to safe, reliable, and reasonably priced electricity; §39.151(a)(2), which requires a power region to establish an independent organization to ensure the reliability and adequacy of the regional electrical networks; §39.151(d), which requires the commission to adopt and enforce rules relating to the reliability of the regional electrical network or delegate to an independent organization responsibilities for establishing or enforcing such rules; §39.151(j), which requires a retail electric provider (REP), municipally owned utility, electric cooperative, power marketer, transmission and distribution utility, or PGC to observe all scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures established by the independent system operator in ERCOT; §39.351, which requires a PGC to provide information required by commission rule and comply with the reliability standards adopted by an independent organization; §39.352, which requires a REP to demonstrate the financial and technical resources to provide continuous and reliable service and the resources needed to meet PURA's customer protection requirements, and to comply with all customer protection guidelines established by the commission and PURA, and §41.004, which provides the commission with jurisdiction to require electric co-

operatives to report to the commission to the extent necessary to ensure the public safety.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.003, 14.151, 14.153, 31.001, 37.001, 37.151, 38.001, 38.002, 38.005, 38.071, 39.101, 39.151, 39.351, 39.352, and 41.004.

§25.362. *Electric Reliability Council of Texas (ERCOT) Governance.*

(a) - (h) (No change.)

(i) Required reports and other information. ERCOT shall file with the commission the reports and provide the information required by this subsection.

(1) (No change.)

(2) Operations report and plan. No later than January 15 of each year, ERCOT shall file an operations report and plan. The commission may initiate a review of the plan, at its discretion. The report and plan shall contain the following information:

(A) - (F) (No change.)

(G) An emergency communications plan that describes how ERCOT will communicate with the public, media, governmental entities, and market participants concerning events that affect the bulk electric system [to market participants, government officials, and the public information concerning actual or likely disruptions of electric service that would affect a significant number of customers];

(H) An assessment of the reliability and adequacy of the ERCOT system during extremely cold or extremely hot weather conditions, or drought, for which purpose ERCOT has the right, upon reasonable notice, to conduct generator site visits to review compliance with weatherization plans and has the right to obtain from generators any information concerning water supplies for generation purposes, including contracts, water rights, and other information; and [including information regarding steps to be taken by power generation companies and utilities to prepare their assets for extreme weather events; and]

(I) (No change.)

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

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

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 23, 2014.

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Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: March 9, 2014

For further information, please call: (512) 936-7223



SUBCHAPTER I TRANSMISSION AND DISTRIBUTION

DIVISION 2. TRANSMISSION AND DISTRIBUTION APPLICABLE TO ALL ELECTRIC UTILITIES

16 TAC §25.214

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 16 TAC §25.214(d) is not included in the print version of the Texas Register. The figure is available in the on-line version of the February 7, 2014, issue of the Texas Register.)

The Public Utility Commission of Texas (commission) proposes an amendment to §25.214, relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities (TDUs). The proposed amendment to the Pro-Forma Retail Delivery Tariff (Retail Tariff) will clarify the terms and conditions and further standardize services provided by all TDUs to the retail market. The amendment includes but is not limited to modifications that refine the definitions, clarify the requirements for market notices, reduce the time to repair security lighting, require TDUs to provide interval data from standard meters on a daily basis and timely replacement of interval data when corrected or revised interval data is available, and improve the organization and layout of Chapter 6. The requirements for non-standard and standard metering service are separated in Chapter 6 as well. Improvements are made to the Retail Tariff by extending the timelines for discretionary services provided to premises with a standard meter in §6.1.2. The amendment also conforms the language in other sections to be consistent with the comprehensive changes in Chapter 6. The amendment includes grammatical and layout changes. This rule is a competition rule subject to judicial review as specified in PURA §39.001(e). Project Number 41121 is assigned to this proceeding.

Neal Frederick, Senior Financial Analyst, Competitive Markets Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Frederick has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be to enhance customer service for electricity users, which will be achieved through better standardization of delivery service by TDUs to Retail Electric Providers (REPs), and faster completion of certain discretionary services provided to REPs and customers. There may be economic costs to persons required to comply with the section as proposed, but these costs are expected to be minimal. The benefits to customers resulting from adoption of these amendments are expected to outweigh the costs. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. Therefore, no regulatory flexibility analysis is required.

Mr. Frederick has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rule-making, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, in the Commissioner's Hearing Room located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on March 25, 2014. The request for a public hearing must be received by March 7, 2014.

Comments on the proposed amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by March 7, 2014. Reply comments may be submitted by March 21, 2014. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to 16 TAC §22.71(c). Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 41121.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2012) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §14.001, which provides the commission with the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; PURA §32.101, which requires an electric utility to file its tariff with each regulatory authority; PURA §38.001, which requires an electric utility to furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable; PURA §38.002, which grants the commission the authority, on its own motion or on complaint and after reasonable notice to adopt just and reasonable standards, classifications, rules, or practices an electric utility must follow in furnishing a service; PURA §39.107, which establishes customer choice in a service area; and PURA §39.203 which grants the commission the authority to establish reasonable and comparable terms and conditions for open access on distribution facilities for all retail electric utilities offering customer choice.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 14.001, 32.101, 38.001, 38.002, 39.107, and 39.203.

§25.214. *Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities.*

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

(d) Proforma Retail Delivery Tariff. Tariff for Retail Delivery Service
Figure: 16 TAC §25.214(d)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 23, 2014.

TRD-201400282

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

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For further information, please call: (512) 463-7293

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SUBCHAPTER J. COSTS, RATES AND TARIFFS

DIVISION 1. RETAIL RATES

16 TAC §25.245

The Public Utility Commission of Texas (commission) proposes new §25.245, relating to Rate-Case Expenses. The proposed rule establishes criteria for review of utilities' and municipalities' requests for recovery of or reimbursement for rate-case expenses. Project Number 41622 is assigned to this proceeding.

Anna Givens, Senior Regulatory Accountant in the Rate Regulation Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed section.

Ms. Givens has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be the efficient review of requests for recovery or reimbursement for rate-case expenses and the reduction of such expenses. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Ms. Givens has also determined that for each year of the first five years the proposed rule is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the APA, Texas Government Code §2001.029 at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed new section may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711- 3326, within 30 days after publication. Sixteen copies of comments to the proposed section are required to be filed pursuant to 16 TAC §22.71(c). Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed section. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 41622.

The commission also solicits specific comments regarding the following questions:

(1) Should the proposed rule, if adopted, explicitly allow for allocation of rate-case expenses to a utility's shareholders?

(2) Should rate-case expenses incurred for purposes of reducing a utility's commission-authorized Texas-jurisdictional retail revenue requirement be allocated to and collected from ratepayers in a manner different from the allocation and collection of rate-case expenses incurred for the purpose of shifting costs among Texas-jurisdictional retail customer groups? If so, how should the commission determine the amount and recovery method of the costs associated with these categories of expenses?

(3) Should the commission require that rate-case expenses be evaluated in the proceeding in which they are incurred unless the commission authorizes their consideration in a future proceeding?

(4) Is it appropriate for intervening municipalities to be subject to P.U.C. Substantive Rule §25.245(d)(3)(B) as proposed?

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2013) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §33.023 which requires the commission to order the reimbursement of a municipality's reasonable rate-case expenses, and PURA §36.061 which grants the commission the authority to allow a utility to recover its reasonable rate-case expenses.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 33.023, 36.061.

§25.245. Rate-Case Expenses.

(a) Application. This section applies to municipalities and utilities requesting recovery of or reimbursement for rate-case expenses pursuant to Public Utility Regulatory Act (PURA) §33.023 or §36.061(b)(2).

(b) Requirements for claiming recovery of or reimbursement for rate-case expenses. In any rate proceeding, a utility or municipality requesting recovery of or reimbursement for its rate-case expenses pursuant to PURA §33.023 or §36.061(b)(2) shall have the burden to prove the reasonableness of such rate-case expenses by a preponderance of the evidence. In order to establish its rate-case expenses, each utility or municipality shall detail and itemize all rate-case expenses and shall provide evidence, verified by testimony or affidavit, showing the reasonableness of the cost of all professional services, including but not limited to:

- (1) time and labor required;
- (2) nature and complexities of the case;
- (3) amount of money or value of property or interest at stake;
- (4) extent of responsibilities the attorney or professional assumes; and
- (5) benefits to the client from the services.

(c) Criteria for review. In determining the reasonableness of the rate-case expenses, the presiding officer shall consider all relevant factors, including but not limited to those set out previously, and shall also consider:

- (1) whether the rates paid to, tasks performed by, and time spent on each task by an entity were extreme or excessive;
- (2) whether there was duplication of services or testimony;
- (3) the novelty of the issues addressed, including, but not limited to:

(A) whether a legal or factual contention advanced in a rate proceeding is warranted by existing law or policy or by a non-frivolous argument for the extension, modification, or reversal of existing law or policy or the establishment of a new law or policy; or

(B) whether an entity's proposal on any issue is contrary to clearly established commission precedent, so long as that precedent is no longer subject to any appeal;

- (4) the amount of discovery;
- (5) the occurrence of a hearing; and
- (6) the size of the utility and number of customers served.

(d) Methodologies for calculating rate-case expenses. When considering a utility's or municipality's request for recovery of its rate-case expenses pursuant to PURA §33.023 or §36.061(b)(2), if the evidence presented pursuant to subsection (b) of this section does not enable the presiding officer to determine the amount of expenses to be disallowed with reasonable certainty and specificity then the presiding officer may deny recovery of a proportion of a utility's or municipality's requested rate-case expenses equal to any or a combination of the following:

(1) The 50/50 Method. For utilities, 50% of the utility's total requested expenses, in recognition that the utility's shareholders, who reap benefits from a rate increase, should also share in the cost of obtaining that rate increase.

(2) The Results Oriented Method.

(A) For utilities, the ratio of the amount of the increase in revenue requirement requested by the utility that was denied to the total amount of the increase in revenue requirement requested in a proceeding by the utility.

(B) For municipalities, the ratio of the amount of the increase in revenue requirement requested by the utility unsuccessfully challenged by the municipality to the total amount of the increase in revenue requirement challenged by the municipality.

(3) The Issue Specific Method.

(A) For utilities, the ratio of the amount of the increase in revenue requirement requested by a utility related to any unsuccessfully litigated issue(s) to the total revenue requirement increase requested by the utility.

(B) For municipalities, the ratio of the amount of the increase in revenue requirement requested by the utility unsuccessfully challenged by the municipality relating to any unsuccessfully litigated issue(s) by the municipality to the total amount of the increase in revenue requirement challenged by the municipality.

(4) The 51% Allowance Method. For utilities, all of a utility's requested rate-case expenses incurred in a proceeding in which the increase in the utility's approved revenue requirement after a contested hearing is less than 51% of the total amount of the increase in revenue requirement requested by the utility.

(5) The result of the use of any other appropriate methodology.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2014.

TRD-201400298

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

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For further information, please call: (512) 936-7223



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 33. STATEMENT OF INVESTMENT OBJECTIVES, POLICIES, AND GUIDELINES OF THE TEXAS PERMANENT SCHOOL FUND SUBCHAPTER AA. COMMISSIONER'S RULES

19 TAC §33.1001

The Texas Education Agency (TEA) proposes new §33.1001, concerning the charter district bond guarantee reserve fund. The proposed new rule would establish procedures for payments by charter holders to the Charter District Bond Guarantee Reserve Fund established under the Texas Education Code (TEC), §45.0571.

With Senate Bill 1, Article 59, 82nd Texas Legislature, First Called Session, 2011, and House Bill 885, 83rd Texas Legislature, Regular Session, 2013, the Texas Legislature expanded the Permanent School Fund Bond Guarantee Program established under the TEC, Chapter 45, Subchapter C. This expansion allowed for the guarantee of bonds issued for the benefit of open-enrollment charter schools. In expanding the program, the legislature created a dedicated fund in the state treasury to serve as a reserve fund for making bond payments on behalf of charter holders that default on guaranteed bonds. Charter holders approved for the guarantee must make annual payments to the commissioner of education for deposit to the fund.

In November 2013, the State Board of Education exercised its rulemaking authority to approve for first reading and filing authorization 19 TAC §33.67, which would implement the bond guarantee program for charter schools. With proposed new 19 TAC §33.1001, Payments for Remittance to Charter District Bond Guarantee Reserve Fund, the commissioner is exercising his rulemaking authority to establish a rule related to the reserve fund, as authorized under the TEC, §45.0571.

Proposed new 19 TAC §33.1001 would provide definitions, including a definition of *charter district*; establish procedures for charter districts to remit payments for the reserve fund; and specify the amount of each payment and how that amount was determined.

The proposed new section would have no procedural and reporting implications. The proposed new section would have no locally maintained paperwork requirements.

Lisa Dawn-Fisher, associate commissioner for school finance/chief school finance officer, has determined that for the first five-year period the new section is in effect there will be no additional costs for state government as a result of enforcing or administering the new section. The proposed new section would have fiscal implications for open-enrollment charter schools, but not any beyond what are provided for by the authorizing statute.

The TEC, §45.0571, requires an open-enrollment charter holder that is designated a charter district and whose bonds are approved for the guarantee to remit annually to the commissioner, for deposit to the Charter District Bond Guarantee Reserve Fund, the amount equal to 10% of the savings resulting from the lower interest rate on the bonds that is due to the guarantee. The TEC,

§45.0571, also requires the commissioner to adopt rules for determining the amount due under this section.

The commissioner has determined this amount to currently be equal to 0.1% of the principal amount that is outstanding on a given date. This savings represents the current average savings that would be realized by charter holders designated as charter districts and approved for the guarantee.

Dr. Dawn-Fisher has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section would be providing charter districts with the procedures for making the payments required for remittance to the Charter District Bond Guarantee Reserve Fund. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins February 7, 2014, and ends March 10, 2014. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on February 7, 2014.

The new section is proposed under the Texas Education Code, §45.0571, which authorizes the commissioner to adopt rules to determine the total and annual amounts due under the Charter District Bond Guarantee Reserve Fund.

The new section implements the Texas Education Code, §45.0571.

§33.1001. Payments for Remittance to Charter District Bond Guarantee Reserve Fund.

(a) In this section, "charter district," "combination issue," and "refunding issue," have the meanings assigned to those terms by §33.67 of this title (relating to Bond Guarantee Program for Charter Schools).

(b) A charter district that has bonds guaranteed under §33.67 of this title must annually remit to the commissioner of education a payment for deposit in the Charter District Bond Guarantee Reserve Fund established under the Texas Education Code (TEC), §45.0571, as described in subsections (d) and (e) of this section.

(c) The first annual amount due under this section is the amount equal to 0.1% of the principal amount that is outstanding on the date the bonds were issued, which is the closing date for the bonds. The amount due annually for each subsequent payment due under this section is the amount equal to 0.1% of the principal amount that is outstanding on the anniversary of the closing date. No payment is due on an anniversary date on which no principal amount is outstanding. The total amount due under this section is the sum of all annual payments due.

(d) The first payment due under this section is due within 30 days of the closing date. The commissioner will direct the comptroller to withhold the amount of this first payment from the state funds otherwise payable to the charter district, on a date that falls within 30 days of the closing date. If, on that date, the state funds remaining to be paid

to the charter district for the year are less than the amount due to the reserve fund for that year, the commissioner will recover the difference as authorized under the TEC, §42.258.

(e) Each subsequent annual payment is due on the anniversary of the closing date. The commissioner will direct the comptroller to annually, on the anniversary date, withhold the amount due to the reserve fund for that year from the state funds otherwise payable to the charter district. If, on the anniversary date, the state funds remaining to be paid to the charter district for the year are less than the amount due to the reserve fund for that year, the commissioner will recover the difference as authorized under the TEC, §42.258.

(f) The commissioner will provide a charter district with a statement of the total and annual amounts due under this section within 60 days of the date that the bonds approved for the guarantee under §33.67 of this title are sold. The commissioner will calculate savings for refunding issues, and the refunding portion of combination issues, using the principal amount that is being refunded.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 23, 2014.

TRD-201400281

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: March 9, 2014

For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 367. ENFORCEMENT

22 TAC §367.14

The Texas State Board of Plumbing Examiners (Board) proposes an amendment to 22 TAC §367.14 (Board Rule §367.14), concerning contested cases before the State Office of Administrative Hearings.

Background and Justification

The proposed amendment to Board Rule §367.14 addresses the procedure for obtaining a default judgment at the State Office of Administrative Hearings in cases in which it is not possible to prove actual receipt of a notice of hearing. Under SOAH Rule of Procedure 1 TAC §155.501, "a hearing may proceed on a default basis if the referring agency's statute or rules authorize service of the notice of hearing by sending it to the party's last known address as shown by the referring agency's records."

It is common for the Board to prosecute cases against individuals who are not licensed by the Board. Often the only evidence of the person's last known address that the Board can provide is what is found in the Board's records. This rule addresses this very common problem.

Fiscal Note

Lisa Hill, Executive Director, has determined that for the first five-year period the amendment is in effect, there will be no additional cost to state or local governments as a result of enforcing or administering the amendment.

Ms. Hill has determined that there will be no economic cost to individuals who would otherwise be subject to this rule. Ms. Hill has also determined there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in effect between small and large businesses.

Public Benefit

Ms. Hill has concluded that for each year of the first five years the rule is amended, the anticipated public benefit is to provide the Board with greater enforcement authority.

Public Comment

The Board invites comments on the proposed amendment from any member of the public. Written comments should be mailed to Lisa Hill, Executive Director, at P.O. Box 4200, Austin, Texas 78765-4200; faxed to her attention at (512) 450-0637; or sent by email to info@tsbpe.state.tx.us.

Statutory Authority

The amendment to Board Rule §367.14 is proposed under and affects Chapter 1301 of the Texas Occupations Code. Texas Occupations Code §1301.251 requires the Board to adopt and enforce rules necessary to administer Chapter 1301 of the Texas Occupations Code.

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

§367.14. *Contested Case; State Office of Administrative Hearings.*

(a) A contested case shall mean any action that is referred by the Enforcement Committee or the Board to the State Office of Administrative Hearings.

(b) Respondent means:

(1) a person in a contested case charged with a violation of the Plumbing License or Board Rules; or

(2) an applicant who has been denied a license, registration or endorsement by the Enforcement Committee.

(c) The Board shall provide for a hearing at the State Office of Administrative Hearings, when requested by a Respondent, after issuing a formal complaint that:

(1) charges an individual with any violation of the Plumbing License Law or Board Rules; or

(2) would prevent an otherwise qualified individual from obtaining or renewing a license, registration, or endorsement, or taking an examination.

(d) The Board shall conduct the hearing in accordance with all applicable provisions of the:

- (1) Administrative Procedure Act;
- (2) State Office of Administrative Hearings Rules;
- (3) Plumbing License Law; and
- (4) Board Rules.

(e) The Board may serve the notice of hearing on the respondent at his or her last known address as shown by the Board's records.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 22, 2014.

TRD-201400228

Lisa Hill

Executive Director

Texas State Board of Plumbing Examiners

Proposed date of adoption: April 14, 2014

For further information, please call: (512) 936-5224



PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 505. THE BOARD

22 TAC §505.10

The Texas State Board of Public Accountancy (Board) proposes an amendment to §505.10, concerning Board Committees.

The amendment to §505.10 will make it clearer that the behavioral enforcement and technical standards review committees, rather than the licensing committee, considers applications for reinstatements.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none;

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none;

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be public's understanding of the reinstatement process.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on

March 7, 2014. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§505.10. *Board Committees.*

(a) Committee appointments. Appointments to standing committees and ad hoc committees shall be considered annually by the board's presiding officer to assist in carrying out the functions of the board under the provisions of the Act. Committee appointments shall be made by the presiding officer for a term of two years but may be terminated at any point by the presiding officer. Committee members may be re-appointed at the discretion of the presiding officer. The board's presiding officer shall be an ex officio member of each standing committee and ad hoc committee and chair of the executive committee.

(b) Committee actions. The actions of the committees are recommendations only and are not binding until ratification by the board at a regularly scheduled meeting.

(c) Committee meetings. Committee meetings shall be held at the call of the committee chair, and a report to the board at its next regularly scheduled meeting shall be made by such chair or, in the absence of the chair, by another board member serving on the committee.

(d) Vacancies. If for any reason a vacancy occurs on a committee, the board's presiding officer may appoint a replacement in accordance with subsection (a) of this section.

(e) Standing committee structure and charge to committees. The standing committees shall consist of policy-making committees and working committees comprised of the following individuals and shall be charged with the following responsibilities.

(1) The executive committee shall be a policy-making committee comprised of the board's presiding officer, assistant presiding officer, secretary, treasurer, immediate past presiding officer of the board if still serving on the board, and at least one other officer elected by the board. The executive committee shall also be the board's audit committee. The executive committee may act on behalf of the full board in matters of urgency, or when a meeting of the full board is not feasible; the executive committee's actions are subject to full board ratification at its next regularly scheduled meeting. The functions of the executive committee shall be to advise, consult with, and make recommendations to the board concerning matters requested by the board's presiding officer, including:

- (A) the board's budget and finances;
- (B) litigation;
- (C) emergency suspensions pursuant to §519.11 of this title (relating to Emergency Suspension);
- (D) emergency rulemaking pursuant to §2001.034 of the Administrative Procedure Act;
- (E) amendments to the Act;
- (F) responses/positions relating to papers, reports, and other submissions from national or international associations or boards;
- (G) legislative oversight, including, but not limited to, budget, performance measures, proposed changes in legislation affecting the board, and computer utilization; and
- (H) special issues.

(2) The CPE committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall make recommendations to the board regarding:

- (A) the mandatory CPE program as it relates to reporting and attendance requirements, registration and monitoring of CPE sponsors, disciplinary actions, reporting forms, and office procedures;
- (B) investigations of sponsor compliance with the terms of the sponsor agreements, including the related recordkeeping requirements;

(C) the results of monitoring CPE courses for the purpose of evaluating the facilities, course content as presented, and the adequacy of the course presenter(s);

(D) any significant deficiencies observed in carrying out subparagraphs (B) and (C) of this paragraph; and

(E) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies related to the mandatory CPE program as it relates to licensees and to relations with sponsors of CPE.

(3) The qualifications committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall make recommendations to the board regarding:

(A) the educational qualifications of an applicant for the UCPAE in accordance with Chapter 511, Subchapter C of this title (relating to Educational Requirements) and courses that may be used to meet the education requirements to take the examination;

(B) the administration, security, discipline, and other aspects of the conduct of the UCPAE in Texas;

(C) the work experience qualifications of an applicant for the CPA certificate in accordance with §§511.121 - 511.124 of this title (relating to Experience Requirements); and

(D) recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies relating to the qualifications process.

(4) The licensing committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in

an advisory capacity. The committee shall make recommendations to the board regarding:

(A) applications for certification, registration, and licensure;

~~(B) requests or applications for reinstatement of any certificate, registration, or license which the board previously has revoked, suspended, or refused to renew;~~

~~(B)~~ [(C)] where applicable, the equivalency examination measuring the professional competency of an applicant for a CPA certificate by reciprocity; and

~~(C)~~ [(D)] recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies as they relate to the licensing process.

(5) The behavioral enforcement committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall:

(A) review requests or applications for reinstatement of any certificate, registration, or license which the committee recommended and the board revoked, suspended, or refused to renew;

(B) [(A)] investigate complaints involving alleged violations of the Act and the board's rules, primarily concerning behavioral issues, and based upon its findings, make recommendations to the board or authorize the staff to offer an agreed consent order, or in the alternative, to litigate the findings of Act or rule violations;

(C) [(B)] follow up on board orders to insure that licensees and certificate holders and others adhere to sanctions prescribed by or agreements with the board; and

(D) [(C)] make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies related to the behavioral restraints of the rules and the Act.

(6) The technical standards review committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least three non-board members who shall serve in an advisory capacity. The committee shall:

(A) review requests or applications for reinstatement of any certificate, registration, or license which the committee recommended and the board revoked, suspended, or refused to renew;

(B) [(A)] investigate complaints from any source involving alleged violations of the Act and the board's rules, primarily concerning technical issues and based upon its findings, make recommendations to the board or authorize the staff to offer an agreed consent order, or in the alternative, to litigate the findings of Act or rule violations;

(C) [(B)] follow up on board orders to insure that licensees or certificate holders and others adhere to sanctions prescribed by or agreements with the board; and

(D) [(C)] make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies related to enforcement of technical standards.

(7) The peer review committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall:

(A) conduct a periodic review and evaluation of reports publicly filed with the State of Texas (or any board, commission, or agency thereof) and of each of the various types of reports, as defined by board rule, of each practice unit, as defined by board rule, which is engaged in the practice of public accountancy in the State of Texas;

(B) refer to the technical standards review committee egregious substandard reports issued by practice units for which educational rehabilitation has not been effective; and

(C) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies relating to the peer review program.

(8) The board rules committee shall be a policy-making committee comprised of at least three board members, one of whom shall serve as chair. The committee shall make recommendations to the board concerning the board's rules, opinions and policies. All working committees shall refer proposed changes to the board's rules, opinions and policies to the rules committee for consideration for recommendation to the board.

(9) The peer assistance oversight committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall oversee the peer assistance program administered by the TSCPA as required under the Texas Health and Safety Code, §467.001(1)(B), and insure that the minimum criteria as set out by the Department of State Health Services are met. It shall make recommendations to the board and the TSCPA regarding modifications to the program and, if warranted, refer cases to other board committees for consideration of disciplinary or remedial action by the board. The committee shall report to the board on a semi-annual basis, by case number, on the status of the program.

(10) The constructive enforcement committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by non-board CPA members. At least one Committee member shall be a public member of the board. The committee shall approve the constructive enforcement program, coordinate its activities with board committees and staff, and supervise the training of constructive enforcement advisory committee members. A staff attorney of the board shall supervise the day to day administration of the constructive enforcement program and activities of the committee's non-board members on behalf of the committee chairman. The committee shall:

(A) investigate matters forwarded to the committee from any other board committee or board staff in accordance with board instruction and policy;

(B) prepare, as appropriate, investigative reports regarding each referred matter;

(C) inform referring board committees or board staff of the results of its investigations;

(D) inform the appropriate committee when possible violations of board rules and the Act are observed; and

(E) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies relating to the constructive enforcement program.

(11) The Fifth-Year Accounting Students Scholarship Program advisory committee was created in §901.657 of the Act (relating to Advisory Committee) and consists of eight members appointed by the board for the purpose of advising the board on how scholarships

under the Fifth-Year Accounting Students Scholarship Program should be established and administered; the amount of money needed to adequately fund the scholarships and the maximum amount that may be awarded in any given year to an individual student; and any priorities among the factors of financial need, ethnic or racial minority status, and scholastic ability and performance.

(f) Ad hoc advisory committees. Ad hoc advisory committees may be established by the board's presiding officer and members and advisory members appointed as appropriate.

(g) Policy guidelines. All advisory committee members performing any duties utilizing board facilities and/or who have access to board records, shall conform and adhere to the standards, board rules, and personnel policies of the board as described in its personnel manual and to the laws of the State of Texas governing state employees.

(h) Conflicts of interest. To avoid a conflict of interest or the appearance of a conflict of interest, no committee member may provide a report or expert testimony for or otherwise advocate on behalf of a complainant or a respondent in a disciplinary matter pending before the board while serving on a standing committee of the board.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 23, 2014.

TRD-201400285

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: March 9, 2014

For further information, please call: (512) 305-7842



CHAPTER 511. ELIGIBILITY

SUBCHAPTER B. CERTIFICATION BY EXAMINATION

22 TAC §511.22

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.22, concerning Initial Filing of the Application of Intent.

The amendment to §511.22 adopts language from the Homeland Security standards so that international students here legally would be permitted to take the exam in Texas.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none;

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none;

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result

of adoption of the proposed amendment will be a fair and secure identification process for international students seeking to take the CPA exam.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on March 7, 2014. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§511.22. *Initial Filing of the Application of Intent.*

(a) The initial filing of the application of intent shall be made on forms prescribed by the board and shall also be in compliance with board rules and with all applicable laws. The application of intent may be submitted at any time and will be used to determine compliance and eligibility for an applicant to take the UCPAE. The application of intent will remain active until:

(1) an applicant takes at least one section of the UCPAE within two years from the date of submission of the application; or

(2) the second anniversary of the submission of the application has lapsed.

(b) Each applicant shall submit their social security number on the application form. Such information shall be considered confidential and can only be disclosed under the provisions of the Act.

(c) Each applicant who submits an application of intent to determine eligibility for the UCPAE must pay a nonrefundable filing fee set by the board in §521.12 of this title (relating to Filing Fee). An application of intent not accompanied by the proper fee or required documents shall not be considered complete. The withholding of information, a misrepresentation, or any untrue statement on the application or supplemental documents will be cause for rejection of the application.

(d) Each applicant must provide official educational documents to be used in determining compliance with the applicable education requirements of the Act.

(e) Each applicant must be informed that a background investigation will be completed to determine the moral character of the applicant.

(f) Each applicant will be notified when all requirements have been met to apply to take the UCPAE, and with the notification, an examination application will be mailed to the applicant.

(g) Each applicant must provide a notarized or certified copy of the following documents:

(1) Unexpired driver's license issued by a state of the United States provided it contains a photograph and information such as name, date of birth, sex, height, eye color, and address; or an unexpired United States passport; and

(2) social security card.

(h) Applicants who are citizens of a foreign country and who cannot meet the requirements of subsection (g) of this section shall comply by providing evidence of a non-expired F-1 Visa issued to students attending a university or college.

(i) [(g)] Applicants who cannot meet the requirements of subsection (g) or (h) of this section shall comply [in compliance] with the federal Department of Homeland Security by providing evidence of both identity and employment authorization by submitting a notarized or certified copy of one of the following unexpired documents: [Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and any amendments; the board must verify proof of legal status in the United States. An applicant shall provide evidence of legal status by submitting a notarized copy of a document from either paragraph (1) or (2) of this subsection.]

(1) An Alien Registration Receipt Card or Permanent Resident Card (Form I-551); or

(2) A foreign passport that contains a temporary I-551 stamp, or temporary I-551 printed notation on a machine-readable immigrant visa; or

(3) An Employment Authorization Document which contains a photograph (Form I-766).

[(1) United States birth certificate; or]

[(2) An acceptable document from list A or list B, and an acceptable document from list C.]

[(A) List A:]

[(i) US Passport (unexpired or expired);]

[(ii) Certificate of US Citizenship (INS Form N-560 or N-561);]

[(iii) Certificate of Naturalization (INS Form N-550 or N-570);]

[(iv) Unexpired foreign passport, with I-551 stamp or attached INS Form I-94 indicating unexpired employment authorization;]

[(v) other document in compliance with PRWORA;]

[(B) List B:]

[(i) Driver's license or ID card issued by a state or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, sex, height, eye color, and address;]

[(ii) ID card issued by federal, state or local government agencies or entities provided it contains a photograph or information such as name, date of birth, sex, height, eye color, and address;]

[(iii) School ID with a photograph;]

[(iv) other document in compliance with PRWORA;]

[(C) List C:]

[(i) U.S. social security card issued by the Social Security Administration (other than a card stating it is not valid for employment);]

[(ii) Certification of Birth Abroad issued by the Department of State (Form FS-545 or Form DS-1350);]

[(iii) Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal;]

[(iv) other document in compliance with PRWORA.]

(j) Applicants who do not have or do not submit a social security card will be required to pay an additional fee to NASBA each time they make application for the UCPAE to verify their legal entry into the U.S.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 23, 2014.

TRD-201400286

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: March 9, 2014

For further information, please call: (512) 305-7842



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 229. FOOD AND DRUG SUBCHAPTER EE. COTTAGE FOOD PRODUCTION OPERATION

25 TAC §229.661

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §229.661, concerning cottage food production operations.

BACKGROUND AND PURPOSE

The proposed amendment to §229.661 implements House Bill (HB) 970, 83rd Legislature, Regular Session, 2013. HB 970 amends Health and Safety Code, Chapter 437, relating to cottage food production operations. HB 970 added and revised definitions, expanded the types of foods that a cottage food production operation may produce, identified locations where cottage foods may be sold, clarified packaging and labeling requirements, prohibited sales by mail or at wholesale, and required a cottage food production operator to complete basic food safety training.

A cottage food production operation is an individual who operates out of the individual's home; produces at the individual's home certain non-potentially hazardous foods; has an annual gross income of \$50,000 or less from the sale of foods; sells the foods produced only directly to consumers at the individual's home, a farmers' market, a farm stand, or a municipal, county, or nonprofit fair, festival, or event; and delivers products to the consumer at the point of sale or another location designated by the consumer.

SECTION-BY-SECTION SUMMARY

Section 229.661(b)(1) revises the definition for baked good by deleting the statement, "A baked good does not include a potentially hazardous food."

Section 229.661(b)(2)(A) revises the definition for cottage food production operation by expanding the foods that may be produced to include candy; coated and uncoated nuts; unroasted nut butters; fruit butters, fruit pie, dehydrated fruit or vegetables, including dried beans; popcorn and popcorn snacks; cereal, including granola; dry mix; vinegar; pickles; mustard; roasted coffee or dry tea; and dried herbs or dried herb mix; and deletes the phrase "for sale at the person's home."

Section 229.661(b)(2)(C) allows cottage food to be sold from an individual's home; a farmers' market; a farm stand; a municipal fair, festival or event; a county fair, festival or event; or a nonprofit fair, festival or event.

Section 229.661(b)(2)(D) allows cottage foods to be delivered to the consumer at the point of sale or another location designated by the consumer.

Section 229.661(b)(5) adds a new definition for "farm stand."

Section 229.661(b)(6) adds a new definition for "farmers' market."

Section 229.661(b)(10) adds a new definition for "pickles."

Section 229.661(b)(11) revises the definition for potentially hazardous food with the definition in HB 970.

Section 229.661(d) adds packaging to the labeling requirements to require all cottage foods to be packaged and labeled in a manner that prevents product contamination, except when food is too large or bulky for conventional packaging.

Section 229.661(e) is amended to prohibit the sale of cottage foods by mail and wholesale.

The new §229.661(f) clarifies that a cottage food production operation is not exempt from meeting the application of Health and

Safety Code, §431.045 - Emergency Order, §431.0495 - Recall Orders, and §431.247 - Delegation of Powers or Duties. The department or local health authority may act to prevent an immediate and serious threat to human life or health.

The new §229.661(g) prohibits a cottage food production operation from selling potentially hazardous foods.

The new §229.661(h) requires an individual who operates a cottage food production operation to complete a basic food safety education or training program for food handlers accredited under Health and Safety Code, Chapter 438, Subchapter D.

FISCAL NOTE

John Huss, Section Director, Environmental and Consumer Safety Section, has determined that for each year of the first five years that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Huss has also determined that there will be no adverse economic impact on small businesses or micro-businesses required to comply with the section as proposed. This is determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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

PUBLIC BENEFIT

In addition, Mr. Huss has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as the result of administering the section is to ensure the public is aware that food produced by a cottage food production operation is not inspected by the department or a local health department. The public will also be aware that an individual who operates a cottage food production operation must have successfully completed a basic food safety education or training program.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposed amendment may be submitted to Cheryl Wilson, Public Sanitation and Retail Food Safety Group, Policy, Standards and Quality Assurance Unit, Division of Regulatory Services, Environmental and Consumer Safety Section, Department of State Health Services, Mail Code 1987, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6770, extension 2053, or by email to cheryl.wilson@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register* and will be held at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas 78754. The meeting date will be posted on the Food Establishments Group website at www.dshs.state.tx.us/foodeestablishments. Please contact Cheryl Wilson at (512) 834-6770, extension 2053, or cheryl.wilson@dshs.state.tx.us if you have questions.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The amendment is authorized under the Health and Safety Code, §437.0193, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to labeling requirements for cottage food production operations; Health and Safety Code, §438.042, which requires the department to adopt standards for accreditation of education and training programs for persons employed in the food service industry; and Government Code, §531.0055(e), and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendment affects Government Code, Chapter 531; and Health and Safety Code, Chapters 437, 438, and 1001.

§229.661. *Cottage Food Production Operations.*

(a) (No change.)

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

(1) Baked good--A food item prepared by baking the item in an oven, which includes cookies, cakes, breads, Danishes, donuts, pastries, pies, and other items that are prepared by baking. [A baked good does not include a potentially hazardous food (time/temperature control for safety foods).]

(2) Cottage food production operation--An individual, operating out of the individual's home, who:

(A) produces at the individual's home:

(i) a baked good that is not a potentially hazardous food, as defined in paragraph (11) of this subsection; [;]

(ii) candy;

(iii) coated and uncoated nuts;

(iv) unroasted nut butters;

(v) fruit butters;

(vi) a canned jam or jelly; [; or]

(vii) a fruit pie;

(viii) dehydrated fruit or vegetables, including dried beans;

(ix) popcorn and popcorn snacks;

(x) cereal, including granola;

(xi) dry mix;

(xii) vinegar;

(xiii) pickles, as defined in paragraph (10) of this subsection;

(xiv) mustard;

(xv) roasted coffee or dry tea; or

(xvi) a dried herb or dried herb mix [for sale at the person's home];

(B) has an annual gross income of \$50,000 or less from the sale of food described by subparagraph (A) of this paragraph; [and]

(C) sells foods produced under subparagraph (A) of this paragraph only directly to consumers at the individual's home; a farmers' market; a farm stand; a municipal, fair, festival, or event; a county fair, festival, or event; or a nonprofit fair, festival, or event; and[;]

(D) delivers products to the consumer at the point of sale or another location designated by the consumer.

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

(5) Farm stand--A premises owned and operated by a producer of agricultural food products at which the producer or other persons may offer for sale produce or foods described in paragraph (2) of this subsection.

(6) Farmers' market--A designated location used primarily for the distribution and sale directly to consumers of food by farmers or other producers.

(7) [(5)] Food establishment--

(A) Food establishment means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption:

(i) such as a restaurant; retail food store; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or food bank; and

(ii) that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(B) Food establishment includes:

(i) an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and

(ii) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consump-

tion is on or off the premises; and regardless of whether there is a charge for the food.

(C) Food establishment does not include:

(i) an establishment that offers only prepackaged foods that are not potentially hazardous (time/temperature control for safety) foods;

(ii) a produce stand that only offers whole, uncut fresh fruits and vegetables;

(iii) a food processing plant including those that are located on the premises of a food establishment;

(iv) a kitchen in a private home if only food that is not potentially hazardous (time/temperature control for safety) food is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law;

(v) an area where food that is prepared as specified in clause (iv) of this subparagraph is sold or offered for human consumption;

(vi) a Bed and Breakfast Limited establishment as defined in §229.162 of this title (relating to Definitions) concerning food establishments;

(vii) a private home that receives catered or home-delivered food; or

(viii) a cottage food production operation.

(8) [(6)] Herbs--Herbs are from the leafy green parts of a plant (either fresh or dried) used for culinary purposes and not for medicinal uses.

(9) [(7)] Home--A primary residence that contains a kitchen and appliances designed for common residential usage.

(10) Pickle--A cucumber preserved in vinegar, brine, or similar solution, and excluding all other pickled vegetables.

(11) Potentially hazardous food (PHF)--A food that requires time and temperature control for safety to limit pathogen growth or toxin production. The term includes a food that must be held under proper temperature controls, such as refrigeration, to prevent the growth of bacteria that may cause human illness. A potentially hazardous food may include a food that contains protein and moisture and is neutral or slightly acidic, such as meat, poultry, fish, and shellfish products, pasteurized and unpasteurized milk and dairy products, raw seed sprouts, baked goods that require refrigeration, including cream or custard pies or cakes, and ice products. The term does not include a food that uses potentially hazardous food as ingredients if the final food product does not require time or temperature control for safety to limit pathogen growth or toxin production.

[(8) Potentially hazardous food (PHF) (time/temperature control for safety food (TCS))--]

[(A) Potentially hazardous food (time/temperature control for safety food) means a food that requires time/temperature control for safety to limit pathogenic microorganism growth or toxin formation.]

[(B) Potentially hazardous food (time/temperature control for safety food) includes:]

[(i) an animal food that is raw or heat-treated; a plant food that is heat-treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation, or garlic-in-oil mixtures that

are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation; and]

[(ii) except as specified in subparagraph (C)(iv) of this paragraph, a food that because of the interaction of its a_w and pH values is designated as Product Assessment required (PA) in Table A or B of this clause.]

[(I) Table A: Interaction of pH and a_w for control of spores in food heat-treated to destroy vegetative cells and subsequently packaged.]
[Figure: 25 TAC §229.661(b)(8)(B)(i)(I)]

[(II) Table B: Interaction of pH and a_w for control of vegetative cells and spores in food not heat-treated or heat-treated but not packaged.]
[Figure: 25 TAC §229.661(b)(8)(B)(ii)(II)]

[(C) Potentially hazardous food (time/temperature control for safety food) does not include:]

[(i) an air-cooled hard-boiled egg with shell intact, or an egg with shell intact that is not hard-boiled, but has been pasteurized to destroy all viable salmonellae;]

[(ii) a food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of non-refrigerated storage and distribution;]

[(iii) a food that because of its pH or a_w value, or interaction of a_w and pH values, is designated as a non-PHF/non-TCS food in Table A or B in subparagraph (B)(ii)(I) and (II) of this paragraph;]

[(iv) a food that is designated as PA in Table A or B in subparagraph (B)(ii)(I) and (II) of this paragraph and has undergone a Product Assessment showing that the growth or toxin formation of pathogenic microorganisms that are reasonably likely to occur in that food is precluded due to:]

[(I) intrinsic factors including added or natural characteristics of the food such as preservatives, antimicrobials, humectants, acidulants, or nutrients;]

[(II) extrinsic factors including environmental or operational factors that affect the food such as packaging, modified atmosphere such as reduced oxygen packaging, shelf life and use, or temperature range of storage and use; or]

[(III) a combination of intrinsic and extrinsic factors; or]

[(v) a food that does not support the growth or toxin formation of pathogenic microorganisms in accordance with one of the clauses (i) - (iv) of this subparagraph even though the food may contain a pathogenic microorganism or chemical or physical contaminant at a level sufficient to cause illness or injury.]

(c) (No change.)

(d) Packaging and labeling [Labeling] requirements for cottage food production operations. All foods prepared by a cottage food production operation shall [must] be packaged and labeled in a manner that prevents product contamination.

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

(3) A food item is not required to be packaged if it is too large or bulky for conventional packaging. For these food items, the information required under paragraph (1) of this subsection shall be provided to the consumer on an invoice or receipt.

(e) Certain sales [Sales] by cottage food production operations [through Internet] prohibited. A cottage food production operation may not sell any of the foods described in this section [these rules] through the Internet, by mail order, or at wholesale. No health claims may be made on any of the advertising media [medium] of the finished products because they are conventional foods.

(f) A cottage food production operation is not exempt from meeting the application of Health and Safety Code, §431.045, Emergency Order; §431.0495, Recall Orders; and §431.247, Delegation of Powers or Duties. The department or local health authority may act to prevent an immediate and serious threat to human life or health.

(g) Prohibition for Cottage Food Production Operations. A cottage food production operation may not sell potentially hazardous foods to customers.

(h) Production of Cottage Food Products - Basic Food Safety Education or Training Requirements.

(1) An individual who operates a cottage food production operation must have successfully completed a basic food safety education or training program for food handlers accredited under Health and Safety Code, Chapter 438, Subchapter D.

(2) An individual may not process, prepare, package, or handle cottage food products unless the individual:

(A) meets the requirements of paragraph (1) of this subsection;

(B) is directly supervised by an individual described by paragraph (1) of this subsection; or

(C) is a member of the household in which the cottage food products are produced.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2014.

TRD-201400299

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: March 9, 2014

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



SUBCHAPTER FF. FARMERS' MARKETS

25 TAC §§229.701 - 229.704

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes new §§229.701 - 229.704, concerning the regulation of food at farmers' markets.

BACKGROUND AND PURPOSE

The purpose of the new rules is to implement Senate Bill (SB) 81 of the 82nd Legislature, Regular Session, 2011, and House Bill (HB) 1382 of the 83rd Legislature, Regular Session, 2013, that amends Health and Safety Code, Chapter 437, relating to requirements for farmers' markets. SB 81 and HB 1382 direct the department to adopt rules under Health and Safety Code, §437.020 and §437.0202, as they relate to food temperature

requirements and permits at farmers' markets that sell to consumers.

SECTION-BY-SECTION SUMMARY

New §229.701 sets forth the purpose and applicability of the subchapter.

New §229.702 defines and clarifies the intended meaning of words and terms used in the subchapter.

New §229.703 sets forth permit requirements for a person who sells potentially hazardous food at a farmers' market.

New §229.704 sets forth temperature and cook time controls for the safety of food at farmers' markets, along with the maintenance of proper storage of food.

FISCAL NOTE

Jon Huss, Section Director, Environmental and Consumer Safety Section, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Huss has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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

PUBLIC BENEFIT

In addition, Mr. Huss has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as the result of administering these sections is the assurance of food safety at farmers markets.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed new rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposed new rules may be submitted to Christopher Sparks, Public Sanitation and Retail Food Safety,

Policy, Standards and Quality Assurance Unit, Division of Regulatory Services, Environmental and Consumer Safety Section, Department of State Health Services, Mail Code 1987, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6770, extension 2303, or by email to christopher.sparks@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register* and will be held at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas 78754. The meeting date will be posted on the Food Establishments Group website at www.dshs.state.tx.us/foodestablishments. Please contact Christopher Sparks at (512) 834-6770, extension 2303, or christopher.sparks@dshs.state.tx.us if you have questions.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The new rules are authorized under the Health and Safety Code, Chapter 437, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines under §§437.020, 437.0201 and 437.0202; and Government Code, §531.0055(e), and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The new rules affect Health and Safety Code, Chapters 437 and 1001; and Government Code, Chapter 531.

§229.701. Purpose and Applicability.

(a) The purpose of this subchapter is to implement rules under the Health and Safety Code, Chapter 437, as they relate to food temperature requirements and permits at farmers' markets.

(b) This subchapter does not apply to a farmers' market in a county:

- (1) that has a population of less than 50,000; and
- (2) over which no local health department has jurisdiction.

(c) A person who sells or provides samples of meat or poultry or food containing meat or poultry shall comply with Health and Safety Code, Chapter 433.

(d) This section does not authorize the sale of or provision of samples of raw milk or raw milk products at a farmers' market.

§229.702. Definitions.

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

- (1) Department--The Department of State Health Services.
- (2) Farmers' market--A designated location used primarily for the distribution and sale directly to consumers of food by farmers and other producers.
- (3) Fish--As defined in §229.162 of this title (relating to Definitions).

(4) Food--An agricultural, apicultural, horticultural, silvicultural, viticultural, or vegetable product for human consumption, in either its natural or processed state, that has been produced or processed or otherwise has had value added to the product in this state. The term includes:

- (A) fish or other aquatic species;
- (B) livestock, a livestock product, or livestock by-product;
- (C) planting seed;
- (D) poultry, a poultry product, or a poultry by-product;
- (E) wildlife processed for food or by-products;
- (F) a product made from a product described in this paragraph by a farmer or other producer who grew or processed the product; or
- (G) produce.

(5) Potable water--Drinking water.

(6) Poultry--A live or dead domesticated bird.

(7) Produce--Fresh fruits or vegetables.

(8) Producer--A person or entity that produces agricultural products by practice of the agricultural arts upon land that the person or entity controls.

(9) Sample--A bite-sized portion of food or foods offered free of charge to demonstrate its characteristics and does not include a whole meal, an individual portion, or a whole sandwich.

(10) Potentially hazardous food (time/temperature control for safety food)--As defined in §229.162 of this title.

§229.703. Permits.

A person who sells potentially hazardous food (time/temperature control for safety food) at a farmers' market shall obtain a temporary food establishment permit.

§229.704. Temperature Requirements.

(a) Potentially hazardous food (time/temperature control for safety food) sold, distributed, or prepared on-site at a farmers' market, and potentially hazardous food (time/temperature control for safety food) transported to or from a farmers' market shall meet the requirements of this section.

(b) Frozen food. Stored frozen foods shall be maintained frozen.

(c) Hot and cold holding. All potentially hazardous food sold at, prepared on site at, or transported to or from a farm or farmers' market at all times shall be maintained at:

- (1) 5 degrees Celsius (41 degrees Fahrenheit) or below; or
- (2) 54 degrees Celsius (135 degrees Fahrenheit) or above.

(d) Cooking of raw animal foods. Raw animal foods shall be cooked to heat all parts of the food to the following temperatures:

- (1) poultry, ground poultry, stuffing with poultry, meat and fish to 74 degrees Celsius (165 degrees Fahrenheit) for 15 seconds;
- (2) ground meat, ground pork, ground fish, and injected meats to 68 degrees Celsius (155 degree Fahrenheit) for 15 seconds;
- (3) beef, pork, meat, fish, and raw shell eggs for immediate service to 63 degrees Celsius (145 degrees Fahrenheit) for 15 seconds;

(4) prepackaged, potentially hazardous food (time/temperature control for safety food), that has been commercially processed, to 57 degrees Celsius (135 degrees Fahrenheit);

(5) a raw or undercooked whole-muscle, intact beef steak may be served if:

(A) the steak is labeled to indicate that it meets the definition of "whole-muscle, intact beef" as defined in §229.162(115) of this title (relating to Definitions); or

(B) the steak is cooked on both the top and bottom to a surface temperature of 63 degrees Celsius (145 degrees Fahrenheit) or above and a cooked color change is achieved on all external surfaces; and

(6) raw animal foods cooked in a microwave oven shall be:

(A) rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat;

(B) covered to retain surface moisture;

(C) heated to a temperature of at least 74 degrees Celsius (165 degrees Fahrenheit) in all parts of the food; and

(D) allowed to stand covered for 2 minutes after cooking to obtain temperature equilibrium.

(e) Cooking fruits and vegetables. Fruits and vegetables that are cooked shall be heated to a temperature of 57 degrees Celsius (135 degrees Fahrenheit).

(f) Eggs. A farmer or egg producer that sells eggs directly to the consumer at a farm or farmers' market shall maintain the eggs at an ambient air temperature of 7 degrees Celsius (45 degrees Fahrenheit) as specified in §229.164(c)(1)(C) of this title (relating to Food).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2014.

TRD-201400300

Lisa Hernandez

General Counsel

Department of State Health Services

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



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 35. PRIVATE SECURITY SUBCHAPTER A. DEFINITIONS

37 TAC §35.1

(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 Public Safety or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Public Safety (the department) proposes the repeal of §35.1, concerning Definitions. This subchapter is proposed for repeal simultaneously with the proposal of new Chapter 35, for the purpose of reorganizing, updating, and clarifying the rules governing the Private Security Program.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be improved administrative efficiency, transparency, and compliance with the statutes and regulations pertaining to the private security industry in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter and Texas Government Code, §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Occupations Code, §1702.061(b) and Texas Government Code, §2001.039 are affected by this proposal.

§35.1. Definitions.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 23, 2014.

TRD-201400241

D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848



SUBCHAPTER B. PROHIBITIONS

37 TAC §§35.11 - 35.14

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

The Texas Department of Public Safety (the department) proposes the repeal of §§35.11 - 35.14, concerning Prohibitions. This subchapter is proposed for repeal simultaneously with the proposal of new Chapter 35, for the purpose of reorganizing, updating, and clarifying the rules governing the Private Security Program.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeals as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be improved administrative efficiency, transparency, and compliance with the statutes and regulations pertaining to the private security industry in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide

the agency in the administration of this chapter and Texas Government Code, §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Occupations Code, §1702.061(b) and Texas Government Code, §2001.039 are affected by this proposal.

§35.11. *Fraudulent Application Prohibited.*

§35.12. *Permitting or Allowing Violations.*

§35.13. *Return of Equipment.*

§35.14. *Unlicensed General Contractors or Other Intermediaries.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



SUBCHAPTER C. STANDARDS

37 TAC §§35.31, 35.32, 35.34 - 35.43, 35.45 - 35.47

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

The Texas Department of Public Safety (the department) proposes the repeal of §§35.31, 35.32, 35.34 - 35.43, and 35.45 - 35.47, concerning Standards. This subchapter is proposed for repeal simultaneously with the proposal of new Chapter 35, for the purpose of reorganizing, updating, and clarifying the rules governing the Private Security Program.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeals as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be improved administrative efficiency, transparency, and compliance with the statutes and regulations pertaining to the private security industry in this state.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment

or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter and Texas Government Code, §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Occupations Code, §1702.061(b) and Texas Government Code, §2001.039 are affected by this proposal.

- §35.31. *Complaint Limitation.*
- §35.32. *Date of Licensing, Certification or Acknowledgement.*
- §35.34. *Standards of Conduct.*
- §35.35. *Standards of Service.*
- §35.36. *Consumer Information and Vehicle Signage.*
- §35.37. *Information Shown in Advertisements.*
- §35.38. *Standards of Reports.*
- §35.39. *Uniform Requirements.*
- §35.40. *Confidential Information.*
- §35.41. *Company Name Selection.*
- §35.42. *Disqualifying Class B Misdemeanor Offenses.*
- §35.43. *Military Discharges.*
- §35.45. *Sex Offender Registrants.*
- §35.46. *Guidelines for Disqualifying Convictions.*
- §35.47. *Residential Solicitation.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 23, 2014.

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D. Phillip Adkins
General Counsel

Texas Department of Public Safety
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For further information, please call: (512) 424-5848



SUBCHAPTER D. SUMMARY SUSPENSION

37 TAC §35.51

(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 Public Safety or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Public Safety (the department) proposes the repeal of §35.51, concerning Stay of Summary Suspension. This subchapter is proposed for repeal simultaneously with the proposal of new Chapter 35, for the purpose of reorganizing, updating, and clarifying the rules governing the Private Security Program.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be improved administrative efficiency, transparency, and compliance with the statutes and regulations pertaining to the private security industry in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter and Texas Government Code, §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Occupations Code, §1702.061(b) and Texas Government Code, §2001.039 are affected by this proposal.

§35.51. *Stay of Summary Suspension.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



SUBCHAPTER E. GENERAL ADMINISTRATION AND EXAMINATIONS

37 TAC §§35.60 - 35.78

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

The Texas Department of Public Safety (the department) proposes the repeal of §§35.60 - 35.78, concerning General Administration and Examinations. This subchapter is proposed for repeal simultaneously with the proposal of new Chapter 35, for the purpose of reorganizing, updating, and clarifying the rules governing the Private Security Program.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeals as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be improved administrative efficiency, transparency, and compliance with the statutes and regulations pertaining to the private security industry in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter and Texas Government Code, §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Occupations Code, §1702.061(b) and Texas Government Code, §2001.039 are affected by this proposal.

§35.60. *Guard Company Manager Requirements.*

§35.61. *Written Examination.*

§35.62. *Reexamination Fee.*

§35.63. *Photographs.*

§35.64. *Fingerprint Cards.*

§35.65. *Assumed Name Requirements.*

§35.66. *Verification of Corporations.*

§35.67. *Assignment Under Class.*

§35.68. *Procedure for Termination of License or Branch Office License.*

§35.69. *Assignment to Spouse or Heirs.*

§35.70. *Fees.*

§35.71. *Operation without Manager.*

§35.72. *Fingerprints.*

§35.73. *Change of Expiration Date of License.*

§35.74. *Reapplication after Revocation.*

§35.75. *Private Security Consultant.*

§35.76. *Electronic Access Control Device Company License.*

§35.77. *Termination of Incomplete Applications.*

§35.78. *Evidence of Insurance.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



SUBCHAPTER F. ADMINISTRATIVE HEARINGS

37 TAC §§35.91 - 35.97

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

The Texas Department of Public Safety (the department) proposes the repeal of §§35.91 - 35.97, concerning Administrative

Hearings. This subchapter is proposed for repeal simultaneously with the proposal of new Chapter 35, for the purpose of reorganizing, updating, and clarifying the rules governing the Private Security Program.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeals as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be improved administrative efficiency, transparency, and compliance with the statutes and regulations pertaining to the private security industry in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter and Texas Government Code, §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Occupations Code, §1702.061(b) and Texas Government Code, §2001.039 are affected by this proposal.

§35.91. *Administrative Hearing Procedures.*

§35.92. *Service of Notice in Non-Rulemaking Proceedings.*

§35.93. *Penalty Range.*

§35.94. *Default Judgments.*

§35.95. *Trial on the Merits.*

§35.96. *Appeal.*

§35.97. *Entry of Appearance Required.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER H. GUARD DOGS

37 TAC §35.131

(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 Public Safety or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Public Safety (the department) proposes the repeal of §35.131, concerning Welfare Requirements. This subchapter is proposed for repeal simultaneously with the proposal of new Chapter 35, for the purpose of reorganizing, updating, and clarifying the rules governing the Private Security Program.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be improved administrative efficiency, transparency, and compliance with the statutes and regulations pertaining to the private security industry in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter and Texas Government Code, §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Occupations Code, §1702.061(b) and Texas Government Code, §2001.039 are affected by this proposal.

§35.131. *Welfare Requirements.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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D. Phillip Adkins

General Counsel

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SUBCHAPTER I. COMMISSIONED SECURITY OFFICERS

37 TAC §§35.141 - 35.146

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

The Texas Department of Public Safety (the department) proposes the repeal of §§35.141 - 35.146, concerning Commissioned Security Officers. This subchapter is proposed for repeal simultaneously with the proposal of new Chapter 35, for the purpose of reorganizing, updating, and clarifying the rules governing the Private Security Program.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeals as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be improved administrative efficiency, transparency, and compliance

with the statutes and regulations pertaining to the private security industry in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter and Texas Government Code, §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Occupations Code, §1702.061(b) and Texas Government Code, §2001.039 are affected by this proposal.

§35.141. *Requirements for Issuance of a Security Officer Commission by the Board.*

§35.142. *Application for a Security Officer Commission.*

§35.143. *Drug-Free Workplace Policy Requirement.*

§35.144. *Violations by Commissioned Security Officers.*

§35.145. *Carrying of a Security Officer Commission.*

§35.146. *Renewal of Security Officer Commission.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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D. Phillip Adkins

General Counsel

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SUBCHAPTER J. PERSONAL PROTECTION OFFICERS

37 TAC §§35.161 - 35.163

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

The Texas Department of Public Safety (the department) proposes the repeal of §§35.161 - 35.163, concerning Personal Protection Officers. This subchapter is proposed for repeal simultaneously with the proposal of new Chapter 35, for the purpose of reorganizing, updating, and clarifying the rules governing the Private Security Program.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeals as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be improved administrative efficiency, transparency, and compliance with the statutes and regulations pertaining to the private security industry in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter and Texas Government Code, §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Occupations Code, §1702.061(b) and Texas Government Code, §2001.039 are affected by this proposal.

§35.161. *Requirements for Issuance of a Personal Protection Authorization.*

§35.162. *Requirements for Personal Protection Officer Employer.*

§35.163. *Violations of the Act by Personal Protection Officers.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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D. Phillip Adkins

General Counsel

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SUBCHAPTER K. LETTERS OF AUTHORITY

37 TAC §35.171, §35.172

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

The Texas Department of Public Safety (the department) proposes the repeal of §35.171 and §35.172, concerning Letters of Authority. This subchapter is proposed for repeal simultaneously with the proposal of new Chapter 35, for the purpose of reorganizing, updating, and clarifying the rules governing the Private Security Program.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeals as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be improved administrative efficiency, transparency, and compliance with the statutes and regulations pertaining to the private security industry in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter and Texas Government Code, §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Occupations Code, §1702.061(b) and Texas Government Code, §2001.039 are affected by this proposal.

§35.171. *Requirements for Issuance of a Private Business Letter of Authority.*

§35.172. *Requirements for Issuance of a Governmental Letter of Authority.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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D. Phillip Adkins

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For further information, please call: (512) 424-5848



SUBCHAPTER L. GENERAL REGISTRATION REQUIREMENTS

37 TAC §§35.181, 35.183, 35.184, 35.186, 35.187

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

The Texas Department of Public Safety (the department) proposes the repeal of §§35.181, 35.183, 35.184, 35.186, and 35.187 concerning General Registration Requirements. This subchapter is proposed for repeal simultaneously with the proposal of new Chapter 35, for the purpose of reorganizing, updating, and clarifying the rules governing the Private Security Program.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeals as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be improved administrative efficiency, transparency, and compliance with the statutes and regulations pertaining to the private security industry in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter. Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061(b) are affected by this proposal.

§35.181. *Employment Requirements.*

§35.183. *Exhibit Pocket Card.*

§35.184. *Licensed Company Responsible for the Registration of Employees.*

§35.186. *Registration Applications.*

§35.187. *Renewal Applications.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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D. Phillip Adkins

General Counsel

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For further information, please call: (512) 424-5848



SUBCHAPTER M. COMPANY RECORDS

37 TAC §§35.201 - 35.205

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

The Texas Department of Public Safety (the department) proposes the repeal of §§35.201 - 35.205, concerning Company Records. This subchapter is proposed for repeal simultaneously with the proposal of new Chapter 35, for the purpose of reorganizing, updating, and clarifying the rules governing the Private Security Program.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeals as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be improved administrative efficiency, transparency, and compliance with the statutes and regulations pertaining to the private security industry in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter and Texas Government Code, §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Occupations Code, §1702.061(b) and Texas Government Code, §2001.039 are affected by this proposal.

§35.201. *Employee Records.*

§35.202. *Location of Records.*

§35.203. *Records to be Available for Inspection.*

§35.204. *Pre-Employment Check.*

§35.205. *Records Required on Commissioned Security Officers.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848

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SUBCHAPTER N. COMPANY LICENSE QUALIFICATIONS

37 TAC §35.221, §35.222

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

The Texas Department of Public Safety (the department) proposes the repeal of §35.221 and §35.222, concerning Company License Qualifications. This subchapter is proposed for repeal simultaneously with the proposal of new Chapter 35, for the purpose of reorganizing, updating, and clarifying the rules governing the Private Security Program.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeals as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be improved administrative efficiency, transparency, and compliance with the statutes and regulations pertaining to the private security industry in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter and Texas Government Code, §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Occupations Code, §1702.061(b) and Texas Government Code, §2001.039 are affected by this proposal.

§35.221. *Qualifications for Investigations Company License.*

§35.222. *Qualifications for Locksmith Company License.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



SUBCHAPTER O. FEES

37 TAC §§35.231 - 35.233

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

The Texas Department of Public Safety (the department) proposes the repeal of §§35.231 - 35.233, concerning Fees. This subchapter is proposed for repeal simultaneously with the proposal of new Chapter 35, for the purpose of reorganizing, updating, and clarifying the rules governing the Private Security Program.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeals as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be improved administrative efficiency, transparency, and compliance with the statutes and regulations pertaining to the private security industry in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter and Texas Government Code, §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Occupations Code, §1702.061(b) and Texas Government Code, §2001.039 are affected by this proposal.

§35.231. *Subscription Fees for Renewals.*

§35.232. *Subscription Fees for Original Applications.*

§35.233. *Subscription Fee for Employee Information Updates.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



SUBCHAPTER P. INVESTIGATIONS

37 TAC §35.242

(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 Public Safety or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Public Safety (the department) proposes the repeal of §35.242, concerning Investigations. This subchapter is proposed for repeal simultaneously with the proposal of new Chapter 35, for the purpose of reorganizing, updating, and clarifying the rules governing the Private Security Program.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be improved administrative efficiency, transparency, and compliance with the statutes and regulations pertaining to the private security industry in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter and Texas Government Code, §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Occupations Code, §1702.061(b) and Texas Government Code, §2001.039 are affected by this proposal.

§35.242. *Investigations Related to Unclaimed Property.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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SUBCHAPTER Q. TRAINING

37 TAC §§35.251 - 35.268

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

The Texas Department of Public Safety (the department) proposes the repeal of §§35.251 - 35.268, concerning Training. This subchapter is proposed for repeal simultaneously with the proposal of new Chapter 35, for the purpose of reorganizing, updating, and clarifying the rules governing the Private Security Program.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeals as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be improved administrative efficiency, transparency, and compliance with the statutes and regulations pertaining to the private security industry in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide

the agency in the administration of this chapter and Texas Government Code, §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Occupations Code, §1702.061(b) and Texas Government Code, §2001.039 are affected by this proposal.

- §35.251. *Training Requirements.*
- §35.252. *Training School and Instructor Approval.*
- §35.253. *Application for a Training School Approval.*
- §35.254. *Withdrawal of Training School Approval.*
- §35.255. *Notification of Denial or Withdrawal of a Letter of Approval.*
- §35.256. *Application for a Training Instructor Approval.*
- §35.257. *Security Officer Training Manual and Examination.*
- §35.258. *Firearm Courses.*
- §35.259. *Shotgun Training.*
- §35.260. *Shotgun Training Requirements.*
- §35.261. *Attendance, Progress, and Completion Records Required.*
- §35.262. *Alarm Installer and Alarm Systems Salesperson Training and Testing/Application for Alarm Training Program Approval.*
- §35.263. *Attendance, Progress and Completion Records Required.*
- §35.264. *Alarm Systems Installer or Alarm Systems Salesperson.*
- §35.265. *Statutory or Rules Violations.*
- §35.266. *Records Required on Manager.*
- §35.267. *Board Refusal of Certificate of Completion.*
- §35.268. *Certificate of Completion.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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D Phillip Adkins
General Counsel
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SUBCHAPTER R. PERSONAL PROTECTION OFFICERS TRAINING

37 TAC §35.281

(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 Public Safety or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Public Safety (the department) proposes the repeal of §35.281, concerning Training - Personal Protection Officers. This subchapter is proposed for repeal simultaneously with the proposal of new Chapter 35, for the purpose of reorganizing, updating, and clarifying the rules governing the Private Security Program.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be improved administrative efficiency, transparency, and compliance with the statutes and regulations pertaining to the private security industry in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter and Texas Government Code, §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Occupations Code, §1702.061(b) and Texas Government Code, §2001.039 are affected by this proposal.

§35.281. *Training - Personal Protection Officers.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER S. CONTINUING EDUCATION 37 TAC §35.291, §35.292

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

The Texas Department of Public Safety (the department) proposes the repeal of §35.291 and §35.292, concerning Continuing Education. This subchapter is proposed for repeal simultaneously with the proposal of new Chapter 35, for the purpose of reorganizing, updating, and clarifying the rules governing the Private Security Program.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeals as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be improved administrative efficiency, transparency, and compliance with the statutes and regulations pertaining to the private security industry in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter and Texas Government Code, §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Occupations Code, §1702.061(b) and Texas Government Code, §2001.039 are affected by this proposal.

§35.291. *Continuing Education Requirements.*

§35.292. *Continuing Education Schools.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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SUBCHAPTER T. DELEGATION OF AUTHORITY

37 TAC §35.301

(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 Public Safety or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Public Safety (the department) proposes the repeal of §35.301, concerning Delegation of Board Authority to Bureau Manager. This subchapter is proposed for repeal simultaneously with the proposal of new Chapter 35, for the purpose of reorganizing, updating, and clarifying the rules governing the Private Security Program.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be improved administrative efficiency, transparency, and compliance with the statutes and regulations pertaining to the private security industry in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter and Texas Government Code, §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Occupations Code, §1702.061(b) and Texas Government Code, §2001.039 are affected by this proposal.

§35.301. Delegation of Board Authority to Bureau Manager:

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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SUBCHAPTER U. LOCKSMITH

37 TAC §§35.311 - 35.313

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

The Texas Department of Public Safety (the department) proposes the repeal of §§35.311 - 35.313, concerning Locksmith. This subchapter is proposed for repeal simultaneously with the proposal of new Chapter 35, for the purpose of reorganizing, updating, and clarifying the rules governing the Private Security Program.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeals as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be improved administrative efficiency, transparency, and compliance with the statutes and regulations pertaining to the private security industry in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter and Texas Government Code, §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Occupations Code, §1702.061(b) and Texas Government Code, §2001.039 are affected by this proposal.

§35.311. Exemptions.

§35.312. Mechanical Security Device.

§35.313. Electronic Access Control Device.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



SUBCHAPTER V. ACTIVE MILITARY AND SPOUSES - SPECIAL CONDITIONS

37 TAC §§35.321 - 35.323

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

The Texas Department of Public Safety (the department) proposes the repeal of §§35.321 - 35.323, concerning Active Military and Spouses - Special Conditions. This subchapter is proposed

for repeal simultaneously with the proposal of new Chapter 35, for the purpose of reorganizing, updating, and clarifying the rules governing the Private Security Program.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeals as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be improved administrative efficiency, transparency, and compliance with the statutes and regulations pertaining to the private security industry in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter and Texas Government Code, §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Occupations Code, §1702.061(b) and Texas Government Code, §2001.039 are affected by this proposal.

§35.321. *Exemption from Penalty for Failure to Renew in Timely Manner.*

§35.322. *Extension of Certain Deadlines for Active Military Personnel.*

§35.323. *Alternative License Procedure for Military Spouse.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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TRD-201400261

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848

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SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §§35.1 - 35.13

The Texas Department of Public Safety (the department) proposes new §§35.1 - 35.13, concerning General Provisions. This new subchapter is proposed simultaneously with the repeal of current Subchapter A consisting of §35.1. The proposed new subchapter is intended to reorganize, update, and consolidate the rules governing the private security program and to generally improve the clarity of the related rules.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period these rules are in effect, the public benefit anticipated as a result of enforcing these rules will be improved administrative efficiency, transparency, and compliance with the statutes and regulations pertaining to the private security industry in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter and Texas Government Code, §2001.039 which requires state agencies to re-

view their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Occupations Code, §1702.061(b) and Texas Government Code, §2001.039 are affected by this proposal.

§35.1. Definitions.

The terms in this section have the following meanings when used in this chapter unless the context clearly indicates otherwise:

- (1) Act--Texas Occupations Code, Chapter 1702.
- (2) Application--Includes an application for an original, renewal, duplicate or updated registration, endorsement, commission, or license issued under the Act.
- (3) Board--The Texas Private Security Board.
- (4) Department--The Texas Department of Public Safety.
- (5) Licensee--A company licensed under the Act.
- (6) Mechanical security device--Any device designed to control the opening or closing of a room, building, safe, vault, lockbox, safety deposit box, or motor vehicle, and which is not an electric access control device or alarm system as defined by the Act.
- (7) Registrant--An individual who holds a registration, endorsement, or commission under the Act.
- (8) SOAH--The State Office of Administrative Hearings.
- (9) Television camera or still camera system--Any device or system of devices that produces a visual image or series of images either recorded, transmitted through an intranet or internet protocol based device, or monitored by security personnel, for the purposes of private security or surveillance. The phrase does not refer to a television camera or still camera system used exclusively:
 - (A) To monitor traffic conditions on public roads;
 - (B) To detect motor vehicle violations on public roads;
 - (C) For telephone or video conferencing;
 - (D) To monitor a manufacturing process;
 - (E) For medical purposes by medical practitioners;
 - (F) By a courtroom reporter or videographer to record depositions or testimony; or
 - (G) By a licensed private investigator who installs, operates, and maintains ownership of the system for the purposes of an ongoing investigation.

§35.2. Employment Requirements.

(a) Those registered with the department to perform a regulated service may only perform such services for the employer with whom they are registered. A person may not contract to perform a regulated service unless licensed by the department as a company under Subchapter F of the Act.

(b) The employment relationship between a licensed company and its registered or commissioned employees must be such that the licensee's commercial liability insurance policy provides the statutorily required coverage for claims arising from the regulated services provided on behalf of the licensee by its registered or commissioned employees. The failure to maintain and provide current documentation of such coverage is a violation of the Act.

§35.3. Registration Applicant Pre-employment Check.

(a) Prior to the submission of the required application materials and employment in a regulated capacity, the licensed employer of

a registrant applicant, or the licensed employer of an applicant for a security officer commission who wishes to allow the applicant to work in an unarmed capacity while the application is pending, shall exercise due diligence in ensuring that the applicant meets the eligibility provisions of the Act and of this chapter. The exercise of due diligence may be satisfied through the review of the applicant's public criminal history on the department's public website or other commercial website, or by obtaining a criminal history clearance letter from the district and county clerks of the applicant's county of residence. Nothing in this section precludes an employer from using a more stringent method of determining an applicant's eligibility.

(b) The employer must maintain, for at least two years, records documenting the pre-employment check, regardless of the subsequent employment status of the applicant. The failure to maintain such records constitutes prima facie proof of failure to exercise the due diligence required by this section.

§35.4. Guidelines for Disqualifying Criminal Offenses.

(a) The private security industry is in a position of trust; it provides services to members of the public that involve access to confidential information, to private property, and to the more vulnerable and defenseless persons within our society. By virtue of their licenses, security professionals are provided with greater opportunities to engage in fraud, theft, or related property crimes. In addition, licensure provides those predisposed to commit assaultive or sexual crimes with greater opportunities to engage in such conduct and to escape detection or prosecution.

(b) Therefore, the board has determined that offenses of the following types directly relate to the duties and responsibilities of those who are licensed under the Act. Such offenses include crimes under the laws of another state or the United States, if the offense contains elements that are substantially similar to the elements of an offense under the laws of this state. Such offenses also include those "aggravated" or otherwise enhanced versions of the listed offenses.

(c) The list of offenses in this subsection is intended to provide guidance only and is not exhaustive of either the offenses that may relate to a particular regulated occupation or of those that are independently disqualifying under Texas Occupations Code, §53.021(a)(2) - (4). The listed offenses are general categories that include all specific offenses within the corresponding chapter of the Texas Penal Code. In addition, after due consideration of the circumstances of the criminal act and its relationship to the position of trust involved in the particular licensed occupation, the board may find that an offense not described below also renders a person unfit to hold a license. In particular, an offense that is committed in one's capacity as a registrant under the Act, or an offense that is facilitated by one's registration, endorsement, or commission under the Act, will be considered related to the licensed occupation and may render the person unfit to hold the license.

(1) Arson, damage to property--Any offense under the Texas Penal Code, Chapter 28.

(2) Assault--Any offense under the Texas Penal Code, Chapter 22.

(3) Bribery--Any offense under the Texas Penal Code, Chapter 36.

(4) Burglary and criminal trespass--Any offense under the Texas Penal Code, Chapter 30.

(5) Criminal homicide--Any offense under the Texas Penal Code, Chapter 19.

(6) Disorderly conduct--Any offense under the Texas Penal Code, Chapter 42.

(7) Fraud--Any offense under the Texas Penal Code, Chapter 32.

(8) Kidnapping--Any offense under the Texas Penal Code, Chapter 20.

(9) Obstructing governmental operation--Any offense under the Texas Penal Code, Chapter 38.

(10) Perjury--Any offense under the Texas Penal Code, Chapter 37.

(11) Robbery--Any offense under the Texas Penal Code, Chapter 29.

(12) Sexual offenses--Any under the Texas Penal Code, Chapter 21.

(13) Theft--Any offense under the Texas Penal Code, Chapter 31.

(14) In addition:

(A) An attempt to commit a crime listed in this subsection;

(B) Aiding and abetting in the commission of a crime listed in this subsection; and

(C) Being an accessory (before or after the fact) to a crime listed in this subsection.

(d) A felony conviction for an offense listed in subsection (c) of this section is disqualifying for ten (10) years from the date of the completion of the sentence, unless subject to this subsection.

(e) A Class A misdemeanor conviction for an offense listed in subsection (c) of this section is disqualifying for five (5) years from the date of completion of the sentence.

(f) Conviction for a felony or Class A offense that does not relate to the occupation for which license is sought is disqualifying for five (5) years from the date of commission, pursuant to Texas Occupations Code, §53.021(a)(2).

(g) Independently of whether the offense is otherwise described or listed in subsection (c) of this section, a conviction for an offense listed in Texas Code of Criminal Procedure, Article 42.12 §3g, or that is a sexually violent offense as defined by Texas Code of Criminal Procedure, Article 62.001, or a conviction for burglary of a habitation, is permanently disqualifying subject to the requirements of Texas Occupations Code, Chapter 53.

(h) A Class B misdemeanor conviction for an offense listed in subsection (c) of this section is disqualifying for five (5) years from the date of conviction.

(i) Any unlisted offense that is substantially similar in elements to an offense listed in subsection (c) of this section is disqualifying in the same manner as the corresponding listed offense.

(j) A pending Class B misdemeanor charged by information for an offense listed in subsection (c) of this section is grounds for summary suspension.

(k) Any pending Class A misdemeanor charged by information or pending felony charged by indictment is grounds for summary suspension.

(l) In determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person against whom disqualifying charges have been filed or who has been convicted of a disqualifying offense, the board shall consider:

(1) The extent and nature of the person's past criminal activity;

(2) The age of the person when the crime was committed;

(3) The amount of time that has elapsed since the person's last criminal activity;

(4) The conduct and work activity of the person before and after the criminal activity;

(5) Evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;

(6) The date the person will be eligible; and

(7) Any other evidence of the person's fitness, including letters of recommendation from:

(A) Prosecutors or law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; or

(B) The sheriff or chief of police in the community where the person resides.

(m) In addition to the documentation listed in subsection (l) of this section, the applicant or licensee or registrant shall furnish proof in the form required by the department that the person has:

(1) Maintained a record of steady employment;

(2) Supported the applicant's dependents;

(3) Maintained a record of good conduct; and

(4) Paid all outstanding court costs, supervision fees, fines and restitution ordered in any criminal case in which the applicant has been charged or convicted.

(n) The failure to timely provide the information listed in subsection (l) and subsection (m) of this section may result in the proposed action being taken against the application or license.

(o) The provisions of this section are authorized by the Act, §1702.004(b), and are intended to comply with the requirements of Texas Occupations Code, Chapter 53.

§35.5. Standards of Conduct.

(a) The State Seal of Texas may not be displayed as part of a uniform or identification card, or markings on a motor vehicle, other than such items prepared or issued by the department.

(b) Licensees and registrants shall cooperate fully with any investigation conducted by the department, including but not limited to the provision of employee records upon request by the department and compliance with any subpoena issued by the department.

(c) If arrested, charged, or indicted for a criminal offense above the level of Class C misdemeanor, a registrant shall within seventy-two (72) hours notify the employer, and the employer (when notified by the employee or otherwise informed) shall notify the department in writing (including by email) within seventy-two (72) hours of notification. The notification shall include the name of the arresting agency, the offense, court, and cause number of the charge or indictment. The registrant and employer must supplement their respective notifications as further information becomes available.

(d) Any registrant who has been issued a pocket card shall carry the pocket card on or about his person while on duty and shall present same upon request from a peace officer or to a representative of the department.

§35.6. Contract and Notification Requirements.

(a) A licensee shall inform the client of the right to a written contract describing the fees to be charged and the services to be rendered.

(b) If requested, a written contract for regulated services shall be furnished to a client within seven (7) days.

(c) The written contract shall be dated and signed by the owner, manager, or other individual expressly authorized to execute contracts on behalf of the licensee.

(d) Within seven (7) days of contracting for regulated services with another licensee, the licensee shall:

(1) Notify the recipient of those services of the name, address, and telephone number, and individual to contact at the company that purchased the contract;

(2) Notify the recipient of services at the time the contract is negotiated that another licensed company may provide any, all or part of the services requested by subcontracting or outsourcing those services; and

(3) Notify the recipient of services of the name, address, phone number, and license number of the company providing those services, if any of the services are subcontracted or outsourced to a licensed third party.

(e) The notice required under subsection (d) of this section shall:

(1) Be mailed to the recipient in a written form that emphasizes the required information; and

(2) If the services are those of an alarm system company, required notice shall include stickers or other materials to be affixed to the alarm system indicating the alarm system company's or alarm systems monitor's new telephone number.

(f) Subsection (e) of this section shall not apply to an alarm system company that subcontracts its monitoring services to another alarm system company if the conditions detailed in this subsection are met:

(1) The contract for monitoring is with another alarm systems company licensed under the Act;

(2) The contract between the original contracting licensee and the client remains in full force and effect, continues to govern all rights of the client with respect to the provision of alarm services, and remains in the control of the original contracting licensee;

(3) Neither the contact information provided to the client, nor the address and telephone numbers for alarm service, have changed as a result of the subcontracting arrangement; and

(4) The contact information provided to the client relating to the monitoring of the alarm system has not changed.

§35.7. Firearm Standards.

(a) Commissioned security officers and personal protection officers may only carry a firearm of the category with which they have been formally trained as required under the Act and this chapter, and for which documentation of the training is on file with the department.

(b) The recognized firearm categories are:

(1) SA--Any handgun, whether semi-automatic or not;

(2) NSA--Handguns that are not semi-automatic; and

(3) STG--Shotgun.

(c) Commissioned security officers and personal protection officers must exercise care and sound judgment in the use and storage of their firearms.

(d) No security officer may carry an inoperative, unsafe, replica, or simulated firearm in the course and scope of employment or while in uniform.

(e) No commissioned security officer or personal protection officer may brandish, point, exhibit, or otherwise display a firearm at anytime, except as authorized by law.

(f) The discharge of a firearm by a security officer while on duty or otherwise acting or purporting to act under the authority of a security officer commission shall be immediately reported to the officer's employer. The employer must notify the department of the discharge of a firearm in writing within twenty-four (24) hours of the incident. The notification to the department must include:

(1) The name of the person discharging the firearm;

(2) The name of the employer;

(3) The location of the incident;

(4) A brief description of the incident;

(5) A statement reflecting whether death, personal injury, or property damage resulted; and

(6) The name of the investigating or arresting law enforcement agency, if applicable.

§35.8. Consumer Information and Signage.

(a) A licensee shall, either orally or in writing, notify all clients or recipients of services of the license number and the mailing address, telephone number, and email address of the department's Regulatory Services Division for the purpose of directing complaints.

(b) If a licensee chooses to provide the notice required by subsection (a) of this section in written form, the notice shall contain the company's license number, and mailing address, telephone number, and email address of the department, in a type face of the same size as that which appears in the document as a whole but in no case less than ten (10) point font.

(c) All licensees must display conspicuously in the principal place of business and in any branch office a sign containing the name, mailing address, telephone number, and email address of the department's Regulatory Services Division, and a statement informing consumers or recipients of services that complaints against licensees may be directed to the department.

(d) The company's license number must be displayed on any vehicle on which the company name is displayed, and must be in letters and numbers at least one (1) inch high and permanently affixed or magnetically attached to each side of the vehicle in a color contrasting with the background color.

§35.9. Advertisements.

(a) A licensee's advertisements must include:

(1) The company name and address as it appears in the records of the department; and

(2) The company's license number.

(b) No licensee shall use the Texas state seal or the insignia of the department to advertise or publicize a commercial undertaking, or otherwise violate Texas Business & Commerce Code, §17.08 or Texas Government Code, §411.017.

(c) The use of the department's name is prohibited when it may give a reasonable person the impression that the department issued the statement or that the individual is acting on behalf of the department.

(d) For purposes of this section, an advertisement includes any media created or used for the purpose of promoting the regulated business of the licensee.

§35.10. Residential Solicitation.

A licensee or employee of a licensee who offers or attempts to sell regulated goods or services to a homeowner or resident of a home or apartment through direct physical contact, including door to door solicitation, shall:

(1) Carry a department issued pocket card, or a receipt of registration issued by the department, and present said pocket card or proof of registration for inspection to the homeowner or resident;

(2) Inform the homeowner or resident of the person's name and employer's name;

(3) Provide to the homeowner or resident, at no charge, a document or business card listing the person's name, employer's name, address, phone number, license number, and the department's phone number with instructions on how to contact or file a complaint with the department;

(4) Not approach or solicit a home or residence during any times where a placard is displayed indicating that the homeowner or residential occupant does not wish to be solicited; and

(5) Provide to the local law enforcement agency with primary jurisdiction a written list of all registrants that will be engaging in the door to door solicitation of its residents before any solicitation occurs. The licensed company shall update the information provided to the above referenced agency if there are any changes to the list. This notification can be made via fax, email, regular mail, or by hand delivery to the agency. This notification shall include the company name and department issued license number.

§35.11. Guard Dog Welfare Requirements.

Each guard dog company and any licensed company using guard dogs shall comply with the requirements detailed in this section:

(1) All pens, spaces, rooms, runs, cages, compartments, or hutches where guard dogs are housed, exercised, trained, or placed shall be kept clean and maintained in a sanitary condition. Excreta shall be removed as often as necessary to prevent contamination of the inhabitants and reduce disease hazards and odors. Adequate shelter shall be provided to protect animals from any form of overheating or cold or inclement weather.

(2) All animals shall be fed at least once a day except as otherwise might be directed by a licensed veterinarian. The food shall be free from contamination, wholesome, palatable, and of sufficient quality and nutritive value to meet the normal daily requirements for the condition and size of the animal. Food receptacles shall be accessible to all animals and shall be located so as to minimize contamination by excreta. Feeding pans shall be durable and kept clean and sanitary. Disposable food receptacles may be used but must be discarded after each feeding. Self feeders may be used for the feeding of food and shall be kept clean and sanitary to prevent molding, deterioration, or caking of feed.

(3) All animals shall be furnished ample water. If potable water is not accessible to the animals at all times, it shall be offered to them at least twice daily for periods of not less than one hour, except as directed by a licensed veterinarian. Watering receptacles shall be kept clean and sanitary.

(4) All animals shall be vaccinated by a licensed veterinarian against rabies by the time they are four (4) months of age and within each subsequent twelve (12) month interval thereafter. Official rabies vaccination certificates issued by the vaccinating veterinarian shall contain certain standard information as designated by the Department of State Health Services. Information required is detailed in this paragraph:

(A) Owner's name, address, and telephone number;

(B) Animal identification, including species, sex, age (3 Month to 12 Month, 12 Month or older), size (lbs.), predominant breed and colors;

(C) Vaccine used, producer, expiration date, and serial number;

(D) Date vaccinated;

(E) Rabies tag number; and

(F) Veterinarian's signature and license number.

§35.12. Classification of Electronic Access Control Device Company License.

Pursuant to the Act, the department has established that the electronic access control device company license will be classified as a Class B, security services contractor license.

§35.13. Drug-Free Workplace Policy.

(a) In the interest of creating a safe and drug-free work environment for clients and employees, all licensed companies shall establish and implement a drug-free workplace policy consistent with the Texas Workforce Commission's "Drug-Free Workplace Policy."

(b) A copy of the company's drug-free workplace policy shall be signed by each employee and kept in each employee's file.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



SUBCHAPTER B. REGISTRATION AND LICENSING

37 TAC §§35.21 - 35.29

The Texas Department of Public Safety (the department) proposes new §§35.21 - 35.29, concerning Registration and Licensing. This new subchapter is proposed simultaneously with the repeal of current Subchapter B consisting of §§35.11 - 35.14. The proposed new subchapter is intended to reorganize, update, and consolidate the rules governing the private security program and to generally improve the clarity of the related rules.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period these rules are

in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period these rules are in effect, the public benefit anticipated as a result of enforcing these rules will be improved administrative efficiency, transparency, and compliance with the statutes and regulations pertaining to the private security industry in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter and Texas Government Code, §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Occupations Code, §1702.061(b) and Texas Government Code, §2001.039 are affected by this proposal.

§35.21. Registration Applications.

(a) It is the responsibility of the licensed company to ensure each employee who is required to register under the Act has submitted to the department a substantially complete application prior to employment in a regulated capacity.

(b) The items detailed in this subsection must be submitted in the manner prescribed by the department, prior to employment in a regulated capacity:

- (1) The required fee;
- (2) A copy of the applicant's Level II certificate of completion when applicable;
- (3) A copy of the alien registration card if the applicant is not a United States citizen;
- (4) A copy of a current work authorization card if the applicant is a non resident alien;

(5) Fingerprints in the form and manner approved by the department; and

(6) The criminal history check fee as provided in this chapter.

(c) As part of the department's criminal history check, additional court documents or related materials may be requested of the applicant. Failure to comply with such a request may result in the rejection of the application as incomplete.

§35.22. Renewal Applications for Registrations and Licenses.

(a) An application for renewal must be submitted in the manner prescribed by the department. The application must include:

- (1) The required fee;
- (2) A copy of the alien registration card if the applicant is not a United States citizen;
- (3) A copy of a current work authorization card if the applicant is a non resident alien;
- (4) Fingerprints in the form and manner approved by the department; and
- (5) The criminal history check fee as provided in this chapter.

(b) A complete renewal application must be submitted prior to expiration for the current registration, endorsement or license to remain in effect pending the approval of the renewal application. If the completed application is not received by the department prior to the expiration date, no regulated services may be performed until a complete renewal application is submitted in compliance with this chapter.

§35.23. Termination of Incomplete Applications.

(a) If an application is illegible or incomplete, the department will notify the applicant of the deficiency. The applicant will have ninety (90) days from the date of notice to address the deficiency. Upon request of the applicant, the department may extend the period to address the deficiency for one additional ninety (90) day period. If the applicant is unable to provide the required information the applicant may request a hearing before the department to determine whether the application may proceed without the requested information. If the applicant has neither provided the required information nor requested a hearing prior to the expiration of the time allowed for compliance, the application will be terminated. An application will not be terminated while a hearing requested under this subsection is pending.

(b) If an applicant fails to provide all required application materials, or fails to respond to a request by the department for additional information necessary to process the application, the application will be terminated under the process set out in subsection (a) of this section.

(c) Following the termination of an application, a new application must be submitted.

§35.24. Photographs.

If the applicant does not have a digital photograph on file with the department or the department is unable to access the photograph on file, the laminated pocket card will be issued without a photograph. When presenting such a pocket card to a peace officer or to a representative of the department, the registrant shall also present a valid government issued identification card or drivers license.

§35.25. Assumed Names; Corporations.

(a) All applicants doing business under an assumed name shall submit a certificate from the county clerk of the county of the applicant's residence showing compliance with the assumed name statute.

(b) Corporations using an assumed name shall submit a certificate from the Texas Secretary of State and the county clerk of the county of the applicant's residence showing compliance with the assumed name statute.

(c) Corporate applicants shall submit a current certificate of existence or a certificate of authority from the Texas Secretary of State.

§35.26. Reclassification and Assignment.

(a) When a Class A or B license is reclassified as a Class C license, a fee in the amount of the difference in the cost of the licenses shall be paid. There shall be no refund when a Class C license is reclassified as a Class A or Class B license.

(b) The department may approve the assignment of a company license to the spouse or heir(s) of a deceased owner provided:

(1) A copy of the owner's death certificate is filed with the department;

(2) A copy of the Will, Order Admitting Will to Probate, Letters of Testament, Affidavit of Heirship with two affiants' signatures, or Order of Heirship is filed with the department; and

(3) In the case of the death of a qualified manager, that a replacement manager is qualified within ninety (90) days.

(c) Other assignments will be permitted only where the majority owners of the original licensee maintain majority ownership of the proposed assignee. The assignor must provide the department written documentation establishing the intended date of assignment, and must ensure any new owners required to register have been approved by the department. The assignee may not perform regulated services prior to the proposed date of assignment or the date of the department's approval of all required registration applications for new owners, whichever is later.

(d) An additional assignment fee will be assessed as provided by this chapter upon assignment of a license under subsection (b) or (c) of this section.

§35.27. Insurance.

(a) To comply with the Act's requirements relating to documentary evidence of insurance coverage, the documents submitted to the department must specifically show:

(1) That the insurance is applicable to the conduct for which the licensee is licensed;

(2) The exclusions or endorsements specific to the activity for which the licensee is licensed, or that there are no such exclusions or endorsements; and

(3) The statutory minimum coverage limits, specifically distinguishing the limits for:

(A) Each occurrence of bodily injury and property damage;

(B) Each occurrence of personal injury; and

(C) The total aggregate amount of coverage for all occurrences.

(b) The applicant or licensee must also provide the department with the insurance agent's current contact information and Texas license number.

(c) Proof of insurance must be submitted in a form and manner prescribed by the department.

(d) Pursuant to the Act, failure to maintain on file with the department evidence of current insurance coverage as required under

this chapter will result in immediate suspension of the license. The suspension will become effective upon receipt of the notice.

(e) The suspension may be rescinded upon receipt by the department of proof that there was no lapse in coverage. Such proof must be submitted within ten (10) business days following the effective date of the suspension.

(f) In the event of a lapse in coverage, or the failure to provide evidence of continuous coverage within ten (10) business days, the license will not be reinstated until a complete application for reinstatement is submitted and approved. The application may be denied on grounds that the licensee has violated the Act or this chapter, including having provided regulated services while suspended pursuant to the Act.

§35.28. Registrant Name Change.

A change of name must be reported to the department within thirty (30) days of the effective date of change. The notice of the change shall be in writing, and shall include a certified copy of the legal document ordering the name change.

§35.29. Registrant Termination.

When a registered employee of a licensee is terminated for any conduct in violation of the Act or this chapter, the licensee shall notify the department of such conduct within fourteen (14) days of termination. The notification shall be submitted in the manner prescribed by the department and must include any and all available documentation or evidence concerning the alleged offense.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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D. Phillip Adkins

General Counsel

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SUBCHAPTER C. MANAGER STANDARDS

37 TAC §§35.41 - 35.43

The Texas Department of Public Safety (the department) proposes new §§35.41 - 35.43, concerning Manager Standards. This new subchapter is filed simultaneously with the repeal of current Subchapter C consisting of §§35.31, 35.32, 35.34 - 35.43, and 35.45 - 35.47. The proposed new subchapter is intended to reorganize, update, and consolidate the rules governing the private security program and to generally improve the clarity of the related rules.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply

with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period these rules are in effect, the public benefit anticipated as a result of enforcing these rules will be improved administrative efficiency, transparency, and compliance with the statutes and regulations pertaining to the private security industry in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter and Texas Government Code, §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Occupations Code, §1702.061(b) and Texas Government Code, §2001.039 are affected by this proposal.

§35.41. Manager Standards.

(a) A qualified manager shall not knowingly allow or direct any person under their control to violate a provision of the Act, this chapter, or any criminal statute.

(b) For purposes of the supervision required under the Act, a manager must have continuous oversight of no more than three (3) companies and two (2) schools, the supervised individuals, or their intermediate level supervisors, in a manner sufficient to ensure that all supervised individuals are in compliance with the Act and this chapter.

§35.42. Manager Examination.

(a) All applicants for registration as qualified manager of a licensee must pass the written examination administered by the department. All applicants must pass the examination with a minimum score of 70%.

(b) Good order and discipline will be maintained during the examination. Conduct which is disruptive is grounds for immediate removal.

(c) An oral examination may be given upon receipt of proof of dyslexia as defined by Texas Education Code, §51.970. Proof must be submitted in writing in a manner prescribed by the department.

(d) Any examination other than the single examination authorized by payment of the original license fee shall be considered a reexamination for which the reexamination fee shall be required.

§35.43. Operation Without Manager.

(a) When a qualified manager of a licensee has been terminated or is no longer employed as manager, and the department has been notified of the action in writing within fourteen (14) days, the business may be temporarily operated by an owner, officer, partner, or shareholder for a period not to exceed sixty (60) days following the date of the manager's termination or cessation of managerial duties.

(b) In the event summary action has been taken against the manager, the manager must immediately cease all regulated functions as qualified manager. Any applicable period of temporary operation pursuant to subsection (a) of this section shall run from the effective date of the summary action.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER D. DISCIPLINARY ACTIONS

37 TAC §35.51, §35.52

The Texas Department of Public Safety (the department) proposes new §35.51 and §35.52, concerning Disciplinary Actions. This new subchapter is proposed simultaneously with the repeal of current Subchapter D consisting of §35.51. The proposed new subchapter is intended to reorganize, update, and consolidate the rules governing the private security program and to generally improve the clarity of the related rules.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period these rules are in effect, the public benefit anticipated as a result of enforcing these rules will be improved administrative efficiency, transparency, and compliance with the statutes and regulations pertaining to the private security industry in this state.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment

or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter and Texas Government Code, §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Occupations Code, §1702.061(b) and Texas Government Code, §2001.039 are affected by this proposal.

§35.51. Complaints.

Complaints relating to alleged violations of the Act or this chapter should be submitted in writing to department headquarters through the Private Security Program's website or mail to the department's Regulatory Services Division. The complaint should provide:

- (1) Name and contact information of complainant;
- (2) Name and type of business of licensee;
- (3) Specific dates and times of described events; and
- (4) Detailed description of the violation.

§35.52. Administrative Penalties.

The administrative penalties in this section are guidelines to be used in enforcement proceedings under the Act. The fines are to be construed as maximum penalties only, and are subject to application of the factors provided in §1702.402 of the Act.

Figure: 37 TAC §35.52

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER E. ADMINISTRATIVE HEARINGS

37 TAC §§35.61 - 35.65

The Texas Department of Public Safety (the department) proposes new §§35.61 - 35.65, concerning Administrative Hearings. This new subchapter is proposed simultaneously with the repeal of current Subchapter E consisting of §§35.60 - 35.78. The proposed new subchapter is intended to reorganize, update, and consolidate the rules governing the private security program and to generally improve the clarity of the related rules.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period these rules are in effect, the public benefit anticipated as a result of enforcing these rules will be improved administrative efficiency, transparency, and compliance with the statutes and regulations pertaining to the private security industry in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter and Texas Government Code, §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Occupations Code, §1702.061(b) and Texas Government Code, §2001.039 are affected by this proposal.

§35.61. Service of Notice.

(a) Licensees shall maintain on file with the department their current mailing and principal place of business address. Notification shall be submitted in writing and received by the department within fourteen (14) days of the date of the change of address.

(b) The department is entitled to rely on the address currently on file for all purposes relating to notification. The failure to maintain a current address with the department is not a defense to any action based on the licensee's failure to respond.

(c) Service by mail is complete upon deposit of the document enclosed in a postage paid, properly addressed envelope in a U.S. Post Office or official depository under the care and control of the U.S. Postal Service.

§35.62. Default Judgments.

Following adequate notice of a hearing on a contested case before SOAH, failure of the respondent to appear at the time of hearing shall entitle the department to request from the administrative law judge an order dismissing the case from the SOAH docket and to informally dispose of the case on a default basis.

§35.63. Hearing Costs.

(a) In cases brought before SOAH, in the event the respondent is adjudicated as being in violation of the Act or this chapter after a trial on the merits, the department has authority to assess the actual costs of the administrative hearing in addition to the penalty imposed. Such costs include, but are not limited to, investigative costs, witness fees, deposition expenses, travel expenses of witnesses, transcription expenses, or any other costs that are necessary for the preparation of the department's case.

(b) The costs of transcribing the testimony and preparing the record for an appeal by judicial review shall be paid by the respondent.

§35.64. Preliminary Hearings.

(a) Preliminary hearings must be requested in writing within thirty (30) calendar days of receipt of the summary action notice letter.

(b) The appeal of the preliminary hearing determination to SOAH must be submitted no later than fifteen (15) calendar days following the date of the determination letter.

(c) Requests for continuance must be submitted in writing at least three (3) business days prior to the scheduled hearing. Requests must be based on good cause. Multiple requests may be presumed to lack good cause and may be denied on that basis.

§35.65. Contested Cases Based On Sex Offender Registration Requirement.

(a) Pursuant to §1702.3615 of the Act, in cases in which the department seeks to deny an application or revoke a license or registration solely on the basis the individual is required to register as a sex offender, the applicant or licensee may waive the right to a hearing before SOAH and appeal directly to the board. This hearing before the board is an evidentiary hearing, conducted at one of the board's quarterly public meetings. Such a hearing may be requested by submitting a written request to the department, at the address provided on the notice.

(b) The factors detailed in this subsection may be employed by the department, the SOAH Administrative Law Judge, or by the board in cases of direct appeal under §1702.3615 of the Act:

- (1) The age of the applicant or licensee at the time of the offense giving rise to the sex offender registration requirement;
- (2) The classification of the offense;
- (3) Evidence of rehabilitation or recidivism;
- (4) The amount of time that has passed since the commission of the offense;

(5) The relationship between the offense and the occupation for which the individual seeks a license, including whether licensure will facilitate the commission of a similar offense; and

(6) Any other factors determined to be significant to a particular case.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER F. COMMISSIONED SECURITY OFFICERS

37 TAC §§35.81 - 35.83

The Texas Department of Public Safety (the department) proposes new §§35.81 - 35.83, concerning Commissioned Security Officers. This new subchapter is proposed simultaneously with the repeal of current Subchapter F consisting of §§35.91 - 35.97. The proposed new subchapter is intended to reorganize, update, and consolidate the rules governing the private security program and to generally improve the clarity of the related rules.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period these rules are in effect, the public benefit anticipated as a result of enforcing these rules will be improved administrative efficiency, transparency, and compliance with the statutes and regulations pertaining to the private security industry in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter and Texas Government Code, §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Occupations Code, §1702.061(b) and Texas Government Code, §2001.039 are affected by this proposal.

§35.81. Application for a Security Officer Commission.

(a) A complete security officer commission application must be submitted on the most current version of the form provided by the department. The application must include:

- (1) The required application fee;
- (2) Fingerprints in form and manner approved by the department;
- (3) The required criminal history check fee;
- (4) A copy of the applicant's Level II certificate of completion;
- (5) A copy of the applicant's Level III certificate of completion;
- (6) Non Texas residents must provide a copy of an identification card issued by the state of the applicant's residence, or other government issued identification card; and
- (7) Non United States citizens must submit a copy of their current alien registration card. Non-resident aliens must also submit a copy of a current work authorization card and documents establishing the right to possess firearms under federal law.

(b) Incomplete applications will not be processed and will be returned for clarification or missing information.

§35.82. Commissioned Security Officer Standards.

(a) Commissioned security officers shall carry their pocket cards while on duty and when traveling to and from the place of assignment, and shall present the cards upon request by a peace officer or to a representative of the department.

(b) A commissioned security officer shall not:

- (1) Perform the duties of a commissioned security officer for any person(s) other than the licensed employer reflected in department records;
- (2) Possess or use any security officer commission pocket card that has been altered; or
- (3) Deface or allow improper use of his security officer commission pocket card.

(c) Commissioned private security officers shall, at a minimum, display on their outermost garment the name of the company by

which the commissioned security officer is employed, the word "Security," and the last name of the security officer. These items shall each be of a size, style, shape, design, and type that are clearly visible by a reasonable person under normal conditions.

(d) Subsection (c) of this section does not apply to a personal protection officer while performing personal protection services in plain clothes.

§35.83. Renewal of Security Officer Commission.

(a) An application for renewal of a security officer commission may not be submitted more than ninety (90) days prior to expiration. A completed renewal application must be submitted on the most current version of the form provided by the department. The application must include:

- (1) The required renewal application fee;
- (2) Non Texas residents must provide a copy of an identification card issued by the state of the applicant's residence, or other government issued identification card;
- (3) Non United States citizens must submit a copy of their current alien registration card. Non resident aliens must also submit a copy of a current work authorization card and documents establishing the right to possess firearms under federal law;
- (4) A valid firearms proficiency certificate issued no more than ninety (90) days prior to date of the renewal application;
- (5) Unless usable prints are on file with the department, fingerprints in a manner approved by the department; and
- (6) The required criminal history check fee.

(b) Incomplete applications will not be processed and will be returned for clarification or missing information.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER G. PERSONAL PROTECTION OFFICERS

37 TAC §§35.91 - 35.93

The Texas Department of Public Safety (the department) proposes new §§35.91 - 35.93, concerning Personal Protection Officers. The proposed new subchapter is intended to reorganize, update, and consolidate the rules governing the private security program and to generally improve the clarity of the related rules.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period these rules are in effect, the public benefit anticipated as a result of enforcing these rules will be improved administrative efficiency, transparency, and compliance with the statutes and regulations pertaining to the private security industry in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter and Texas Government Code, §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Occupations Code, §1702.061(b) and Texas Government Code, §2001.039 are affected by this proposal.

§35.91. Requirements for Personal Protection Endorsement.

(a) An applicant for personal protection endorsement shall:

(1) Submit a written application for a personal protection endorsement on a form prescribed by the department;

(2) Be at least twenty-one (21) years of age;

(3) Either possess a valid security officer commission issued prior to applying for a personal protection endorsement, or submit an application for security officer commission in conjunction with the application for a personal protection endorsement;

(4) Submit proof that the applicant has successfully completed the personal protection officer course taught by an approved personal protection officer instructor; and

(5) Submit proof of completion of the Minnesota Multiphasic Personality Inventory test or equivalent (proof of completion of the Minnesota Multiphasic Personality Inventory test shall be on the prescribed form Declaration of Psychological and Emotional Health and shall be signed by a licensed psychologist).

(b) A personal protection officer may transfer his endorsement to another employer if the personal protection officer:

(1) Has transferred his security officer commission to the new employer; and

(2) Submits the appropriate form and transfer fee to the department within fourteen (14) days of the transfer of employment to the new employer.

§35.92. Employer Requirements.

Personal protection officer employers shall:

(1) Issue the personal protection officer endorsement pocket card issued by the department to the personal protection officer;

(2) Maintain on file for inspection all contracts for personal protection officer services; and

(3) Maintain on file for inspection all current records on all persons issued a personal protection endorsement including the personal protection officer's name, current residential address, and telephone number.

§35.93. Personal Protection Officer Standards.

(a) Personal protection officers must comply with all standards and requirements applicable to commissioned security officers, as provided in this Chapter and the Act.

(b) In addition, a personal protection officer shall not:

(1) Perform personal protection officer duties for any person(s) other than the person(s) employer indicated in the department records;

(2) Fail to timely surrender the personal protection officer pocket card upon written notice served by the department or his employer;

(3) While in the course and scope of employment as a personal protection officer, provide or engage in any other service regulated by the Act or this chapter other than providing personal protection from bodily harm to one (1) or more individuals;

(4) Fail to conceal a firearm if providing the services as a commissioned personal protection officer in plain clothes;

(5) Fail to carry on his or her person, the pocket card issued while performing the officer's duties as a personal protection officer; or

(6) Fail to present the pocket card for security officer commission and personal protection endorsement upon request made by a peace officer or representative of the department.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER H. LETTERS OF AUTHORITY

37 TAC §35.101, §35.102

The Texas Department of Public Safety (the department) proposes new §35.101 and §35.102, concerning Letters of Authority. This new subchapter is proposed simultaneously with the repeal of current Subchapter H consisting of §35.131. The proposed new subchapter is intended to reorganize, update, and consolidate the rules governing the private security program and to generally improve the clarity of the related rules.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period these rules are in effect, the public benefit anticipated as a result of enforcing these rules will be improved administrative efficiency, transparency, and compliance with the statutes and regulations pertaining to the private security industry in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter and Texas Government Code, §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Occupations Code, §1702.061(b) and Texas Government Code, §2001.039 are affected by this proposal.

§35.101. Private Business Letter of Authority.

(a) The security department of a private business, as defined in the Act, must obtain a letter of authority in order to employ a commissioned security officer.

(b) A security department of a private business that employs in a non commissioned capacity an individual meeting the conditions of §1702.323(d) of the Act must obtain a guard company license.

(c) A security department of a private business shall not provide guard company services to a third party.

(d) The holder of a private business letter of authority must qualify a manager who meets the requirements of the Act as they pertain to the manager of a security services contractor and maintain on file with the department the name of the individual responsible to ensure the commissioned security officer's compliance and ensure records are maintained in accordance with applicable laws and rules.

(e) A private business letter of authority is valid for one year and may be renewed by submitting the department approved renewal application and the required renewal fee no earlier than ninety (90) days prior to expiration.

§35.102. Governmental Letter of Authority.

(a) A political subdivision that employs a commissioned private security officer must obtain a governmental letter of authority.

(b) The governmental letter of authority is valid for one (1) year and may be renewed by submitting the department approved renewal application and required renewal fee no earlier than ninety (90) days prior to expiration.

(c) The holder of the governmental letter of authority must designate and maintain on file with the department the name of the individual responsible for ensuring the commissioned security officer's compliance with the Act and this chapter and for ensuring records are maintained in accordance with this chapter.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER I. COMPANY RECORDS

37 TAC §§35.111 - 35.113

The Texas Department of Public Safety (the department) proposes new §§35.111 - 35.113, concerning Company Records. This new subchapter is proposed simultaneously with the repeal of current Subchapter I consisting of §§35.141 - 35.146. The proposed new subchapter is intended to reorganize, update, and consolidate the rules governing the private security program and to generally improve the clarity of the related rules.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no antic-

ipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period these rules are in effect, the public benefit anticipated as a result of enforcing these rules will be improved administrative efficiency, transparency, and compliance with the statutes and regulations pertaining to the private security industry in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter and Texas Government Code, §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Occupations Code, §1702.061(b) and Texas Government Code, §2001.039 are affected by this proposal.

§35.111. Employee Records.

Licensees shall keep records of all employees registered or commissioned under the Act. The employee records, detailed in this section, shall be maintained for a period of two (2) years from the last date of employment:

- (1) Full name, date of employment, position, and address;
- (2) Social security number;
- (3) Last date of employment;
- (4) Date and place of birth;
- (5) One color photograph;
- (6) The results of any drug tests;
- (7) Documentation of the pre-employment check required under §35.3 of this chapter (relating to Registration Applicant Pre-employment Check); and
- (8) All training certificates earned by the employee while employed by the licensee.

§35.112. Business Records.

Licensees shall maintain copies of the records detailed in this section for two (2) years from the later of the date the related service was provided or the date the contract was completed:

- (1) All contracts for regulated service and related documentation reflecting the actual provision of the regulated service; and
- (2) Copies of any timesheets, invoices, or scheduling records reflecting the employment dates of any registered employees.

§35.113. Records Required on Commissioned Security Officers.

In addition to any other records required under this chapter, the employer of a commissioned security officer shall maintain and make available for inspection the records detailed in this section:

- (1) The current residential address of the officer as reported by the officer;
- (2) The current duty assignment and location of assignment;
- (3) The results of all drug tests administered; and
- (4) Documented information on all required training obtained by the officer while employed by the licensee.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER J. SPECIAL COMPANY LICENSE QUALIFICATIONS

37 TAC §§35.121 - 35.123

The Texas Department of Public Safety (the department) proposes new §§35.121 - 35.123, concerning Special Company License Qualifications. This new subchapter is proposed simultaneously with the repeal of current Subchapter J consisting of §§35.161 - 35.163. The proposed new subchapter is intended to reorganize, update, and consolidate the rules governing the private security program and to generally improve the clarity of the related rules.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period these rules are in effect, the public

benefit anticipated as a result of enforcing these rules will be improved administrative efficiency, transparency, and compliance with the statutes and regulations pertaining to the private security industry in this state.

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

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This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter and Texas Government Code, §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Occupations Code, §1702.061(b) and Texas Government Code, §2001.039 are affected by this proposal.

§35.121. Investigations Company License.

(a) Pursuant to the Act, the department has determined that an applicant for licensure as a private investigations company or the prospective manager of the applicant company must meet one of the qualifications detailed in this section:

- (1) Three (3) consecutive years of investigation related experience;
- (2) A bachelor's degree in criminal justice or related course of study;
- (3) A bachelor's degree with twelve (12) months of investigation related experience;
- (4) An associate degree in criminal justice or related course of study, with twenty-four (24) months of investigation related experience;
- (5) A specialized course of study directly designed for and related to the private investigation profession, taught and presented through affiliation with a four (4) year college or university accredited and recognized by the State of Texas. This course of study must be endorsed by the four (4) year college or university's department of criminal justice program and include a departmental faculty member(s) on its instructional faculty. This course of study must consist of a minimum of two hundred (200) instructional hours including coverage of ethics, the Act, and this chapter; or

(6) Other combinations of education and investigation related experience may be substituted for the above at the discretion of the department or its designated representative.

(b) The degrees referenced in subsection (a) of this section must be affiliated with a college or university recognized by the Texas Higher Education Coordinating Board, Southern Association of Colleges and Schools, or other accreditation organization recognized by the State of Texas.

§35.122. Guard Company License.

Pursuant to the Act, the department has determined that an applicant for licensure as a guard company or the prospective manager of the applicant company must meet the qualifications detailed in this section:

- (1) Must be at least twenty one (21) years of age at the time of application;
- (2) Must have at least three (3) years accumulated employment experience in the field in which the company is licensed; and
- (3) Must have at least one (1) year of experience in a managerial or supervisory position.

§35.123. Locksmith Company License.

Pursuant to the Act, the department has determined that an applicant for licensure as a locksmith company (as owner) or the prospective manager of the applicant company must meet one of the qualifications detailed in this section:

(1) Qualification option one. Two (2) consecutive years of full-time locksmith-related experience; or

(2) Qualification option two.

(A) Successful completion of a department approved forty-eight (48) hour basic locksmith course and a six hundred (600) hour fundamentals of locksmith course, with the curriculum content detailed in this subparagraph:

- (i) Introduction to locksmithing.
- (ii) The Act and this chapter.
- (iii) State of Texas and United States Government business requirements.
- (iv) Key blank identification.
- (v) Key machine and key duplication.
- (vi) Codes and code cutting.
- (vii) Basic lock types.
- (viii) Basic picking.
- (ix) Rim and mortise cylinders.
- (x) Key in knob/key in lever locks.
- (xi) Deadbolts and mortise locks.
- (xii) Installations.
- (xiii) Impressioning.
- (xiv) Basic master-keying.
- (xv) Basic safe servicing.
- (xvi) Small format interchangeable core.
- (xvii) High security and key control cylinders.
- (xviii) Automotive opening.
- (xix) Automotive key generation and programming.

(xx) Exit/panic device servicing, replacement, and installation.

(xxi) Door closer servicing, replacement, and installation.

(xxii) Cabinet and drawer lock servicing, replacement, and installation.

(xxiii) Safe installation, moving, and anchoring.

(xxiv) Single door access control service and installation.

(B) Successful completion of a basic locksmith proficiency exam that covers a minimum of twelve (12) locksmith subjects and is approved by the department; and

(C) One (1) year of full-time locksmith related experience.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



SUBCHAPTER K. FEES

37 TAC §35.131, §35.132

The Texas Department of Public Safety (the department) proposes new §35.131 and §35.132, concerning Fees. This new subchapter is proposed simultaneously with the repeal of current Subchapter K consisting of §35.171 and §35.172. The proposed new subchapter is intended to reorganize, update, and consolidate the rules governing the private security program and to generally improve the clarity of the related rules.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period these rules are in effect, the public benefit anticipated as a result of enforcing these rules will be improved administrative efficiency, transparency, and compliance with the statutes and regulations pertaining to the private security industry in this state.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a

rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter and Texas Government Code, §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Occupations Code, §1702.061(b) and Texas Government Code, §2001.039 are affected by this proposal.

§35.131. Licensing and Examination Fees.

(a) Pursuant to the Act, the figure in this subsection details the fee schedule:

Figure: 37 TAC §35.131(a)

(b) Upon completion of development and production of the department's new laminated pocket card, an additional fee of \$5.00 will be charged for any new application or renewal requiring the new card.

(c) Fees collected are non-refundable and non-transferable.

(d) Payment of fees shall be made in a manner approved by the department.

(e) If payment is dishonored or reversed prior to issuance, the application will be abandoned as incomplete. If the registration, endorsement, commission, or license has been issued prior to being dishonored or reversed, revocation proceedings will be initiated pursuant to the Act, §1702.361. The department may dismiss a pending revocation proceeding upon receipt of payment of the full amount due, including any additional processing fees.

(f) Original fees shall not be prorated. The full fee shall accompany all original applications.

§35.132. Subscription Fees.

The fees detailed in this section are authorized under Texas Government Code, §2054.252.

(1) Each individual licensee, registrant, or commissioned security officer shall pay the following fee for occupational license renewal: \$3.00 for a \$30.00 renewal and \$5.00 for renewals from \$50.00 to \$100.00. This fee is in addition to the renewal fee.

(2) Each company licensee shall pay the following fee for occupational license renewal: \$7.00 for a \$225.00 renewal; \$11.00 for a \$300.00 to \$350.00 renewal; \$12.00 for a \$400.00 renewal; and \$16.00 for a \$540.00 renewal. This fee is in addition to the renewal fee.

(3) Each individual applicant for a license, registration or security officer commission shall pay the following fee upon application: \$3.00 for a \$30.00 application; and \$5.00 for a \$50.00 to \$100.00 application. This fee is in addition to the application fee.

(4) Each company license applicant shall pay the following fee upon application: \$11.00 for a \$300.00 to \$350.00 application; \$12.00 for a \$400.00 application; and \$16.00 for a \$540.00 application. This fee is in addition to the application fee.

(5) Each individual registrant or commissioned security officer shall pay a \$2.00 fee for an employee information update. This fee is in addition to the employee information update fee.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER L. TRAINING

37 TAC §§35.141 - 35.147

The Texas Department of Public Safety (the department) proposes new §§35.141 - 35.147, concerning Training. This new subchapter is proposed simultaneously with the repeal of current Subchapter L consisting of §§35.181, 35.183, 35.184, 35.186, and 35.187. The proposed new subchapter is intended to reorganize, update, and consolidate the rules governing the private security program and to generally improve the clarity of the related rules.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period these rules are in effect, the public benefit anticipated as a result of enforcing these rules will be improved administrative efficiency, transparency, and compliance with the statutes and regulations pertaining to the private security industry in this state.

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

ment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter and Texas Government Code, §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Occupations Code, §1702.061(b) and Texas Government Code, §2001.039 are affected by this proposal.

§35.141. Training Requirements.

(a) Security and Personal Protection Officer Training.

(1) The Level II training course shall be completed by all applicants for a security officer commission or for registration as a non-commissioned security officer. The course material shall be prepared or approved by the department. A certificate indicating completion of Level II training shall be submitted to the department with the required application. Level II training may be taught by the licensee's manager, the manager's designee, or a board approved school and board approved instructor using the most current version of the respective Board Level II training course manuals.

(2) The Level III training course shall be completed by all applicants for a security officer commission and a personal protection officer endorsement. The course material shall be prepared by and obtained from the department. A certificate indicating completion of Level III training shall be submitted to the department along with the application to register the individual. Level III training must be taught by a department approved school and a department approved instructor.

(3) The Level IV training course shall be completed by all applicants for a personal protection officer endorsement. The course material shall consist of a minimum of fifteen (15) classroom hours and shall be offered by department approved personal protection officer training schools and taught by department approved personal protection training instructors. All training shall be conducted with a department approved instructor present during all instruction. All students of a personal protection officer training course shall be tested with an examination prepared by and obtained from the department.

(b) Peace Officer Exemption.

(1) Applicants for either a security officer commission or a personal protection officer endorsement who are full-time peace officers, certified by the Texas Commission on Law Enforcement (TCOLE), may be exempted from the Level III training requirements upon submission to the department a sworn affidavit attesting to the applicant's review of and familiarity with the Act and the related administrative rules.

(2) Applicants for either a security officer commission or a personal protection officer endorsement who have honorably retired as Texas peace officers within the preceding two (2) years may be exempted from the Level III training requirements upon submission to the department of proof of their honorably retired status (in the form of documentation from the employing agency or TCOLE), and of a sworn affidavit attesting to the applicant's review of and familiarity with the Act and this chapter. For purposes of the above exemption, "honorably retired" means that the applicant:

(A) Did not retire in lieu of a disciplinary action;

(B) Was eligible to retire from the law enforcement agency or was ineligible to retire only as a result of an injury received in the course of the applicant's employment with the agency; and

(C) Is entitled to receive a pension or annuity for service as a law enforcement officer or is not entitled to receive a pension or annuity only because the law enforcement agency that employed the applicant does not offer a pension or annuity to its employees.

(c) Alarm Systems Training.

(1) The Level I alarm systems training course shall be successfully completed, and the certification submitted to the department, by any registrant employed as an alarm systems installer or a security alarm salesperson, in order to renew an original registration.

(2) Alarm systems Level I training must be taught by a department approved alarm systems training school and a department approved alarm instructor.

(d) An inactive or expired registrant who has not been employed in the investigation or security services industry in the past three (3) years or more must submit current training certificate(s) to the department.

§35.142. Training School Approval.

(a) An application for training school approval shall be submitted in the manner prescribed by the department.

(b) To be approved, the school must:

(1) Use the department's most current training manual;

(2) Register and obtain approval of all instructors as provided under §35.133 of this chapter (relating to Training Instructor Approval);

(3) Register a qualified manager;

(4) Register all owners, officers, partners, or shareholders, as provided in the Act, §1702.110.

(c) The letter of approval or license certificate shall be valid for one (1) year and may be renewed by submitting an application for renewal thirty (30) days prior to the expiration date.

(d) An entity having a private business letter of authority or a governmental letter of authority may seek approval as a training school by meeting requirements of this chapter where applicable. A training school approved under this section may only train employees of the entity.

(e) The department may deny an application for approval for any reason relating to the failure to satisfy the requirements of this section, or for prior violations of the Act or this chapter on the part of the owners or instructors associated with the applicant.

(f) The department may withdraw or suspend approval of a training school upon evidence the school has operated in violation of the Act or this chapter. Certificates of completion or proficiency sub-

mitted for courses taught subsequent to notification of withdrawal or suspension of the school's approval will be rejected.

§35.143. Training Instructor Approval.

(a) An application for approval as a training instructor shall contain evidence of qualification as required by the department. Instructors may be approved for classroom or firearm training, or both. An individual may apply for approval for one or both of these categories. To qualify for classroom or firearm instructor approval, the applicant must submit acceptable certificates of training for each category. The classroom instructor and firearm certificates shall represent a combined minimum of forty (40) hours of department approved instruction.

(b) The items detailed in this subsection may constitute proof of qualification as a classroom instructor for security officers:

(1) An instructor's certificate issued by Texas Commission on Law Enforcement (TCOLE);

(2) An instructor's certificate issued by federal, state, or political subdivision law enforcement agency approved by the department;

(3) An instructor's certificate issued by the Texas Education Agency (TEA);

(4) An instructor's certificate relating to law enforcement, private security, or industrial security issued by a junior college, college, or university; or

(5) A concealed handgun instructor certificate issued by the department.

(c) The items listed in this subsection may constitute proof of qualification as a firearm training instructor, if reflecting training completed within two (2) years of the date of the application:

(1) A handgun instructor's certificate issued by the National Rifle Association;

(2) A firearm instructor's certificate issued by TCOLE; or

(3) A firearm instructor's certificate issued by a federal, state, or political subdivision law enforcement agency approved by the department;

(d) Proof of qualification as an alarm systems training instructor shall include proof of completion of an approved training course on alarm installation.

(e) Proof of qualification as a personal protection officer instructor shall include, but not be limited to:

(1) A firearm instructor's certificate issued by TCOLE along with proof that the individual has instructed nonlethal self-defense or nonlethal defense of a third party for three (3) or more years. Evidence may include:

(A) Affidavit from employer; or

(B) A copy of curriculum taught.

(2) An instructor's certificate issued by federal, state, or political subdivision law enforcement academy along with proof that the individual has instructed nonlethal self defense or nonlethal defense of a third party for three (3) or more years. Evidence may include:

(A) Affidavit from employer; or

(B) A copy of curriculum taught.

(3) An instructor's certificate issued by TEA along with proof that the individual has instructed nonlethal self defense or non-

lethal defense of a third party for three (3) or more years. Evidence may include:

- (A) Affidavit from employer; or
- (B) A copy of curriculum taught.

(4) An instructor's certificate relating to law enforcement, private security or industrial security issued by a junior college, college or university along with proof that the individual has instructed nonlethal self defense or nonlethal defense of a third party for three (3) or more years. Evidence may include:

- (A) An affidavit from an employer; or
- (B) A copy of curriculum taught.

(5) Evidence of successful completion of a department approved training course for personal protection officer instructors.

(f) A letter of approval from the department shall be issued to each approved instructor and shall be valid for a period of one (1) year. The instructor's approval may be renewed for a period of one (1) year, upon application to the department and payment of the renewal fee.

(g) Notice shall be given in writing to the department within fourteen (14) days after a change in address of the approved instructor.

(h) A letter of approval from the department shall be issued to each approved instructor and shall be valid for a period of one (1) year. The instructor's approval may be renewed at any time up to one (1) year after expiration, upon application to the department and payment of the renewal fee.

(i) In addition to summary actions under the Act, based on criminal history disqualifiers, the department may revoke or suspend an instructor's approval or deny the application or renewal thereof upon evidence that:

- (1) The instructor or applicant has violated any provisions of the Act or this chapter;
 - (2) The qualifying instructor's certificate has been revoked or suspended by the issuing agency;
 - (3) A material false statement was made in the application;
- or
- (4) The instructor does not meet the qualifications set forth in the provisions of the Act and this chapter.

§35.144. Training Manuals and Examinations for Commissioned Security Officer and Personal Protection Officer.

(a) The most current version of department's training manuals shall be used by all department approved Level III and Level IV training schools.

(b) All students of a Level III or Level IV training school shall be tested with the most current version examination prepared by and obtained from the department.

(c) The passing grade of all examinations shall be a minimum of 75% correct answers.

§35.145. Handgun Courses.

(a) In addition to the firearm qualification requirements as set forth in the Act, a department approved firearm training instructor may qualify a student by using:

- (1) The Texas Department of Public Safety Primary Issued Handgun Qualification Course; or
- (2) The Texas Department of Public Safety Approved Concealed Handgun License Course.

(b) All individuals qualifying with a firearm to satisfy the requirements of the Act shall qualify with an actual demonstration by the individual of the ability to safely and proficiently use the category of firearm for which the individual seeks qualification.

(c) The categories of handguns are:

- (1) SA--Semi-automatic; and
- (2) NSA--Non semi-automatic.

(d) The SA qualification authorizes the carrying of either semi automatic or non semi-automatic handguns.

§35.146. Shotgun Course of Fire.

(a) Any commissioned security officer licensed by the department who, in the performance of his/her duties, has a shotgun available to assist in the protection of life or property must demonstrate proficiency to a department approved firearms training instructor by successfully completing the course of fire for shotgun training. The course of fire shall consist of nine rounds of nine (9) pellet "00" buckshot (no slugs) fired as detailed in this section:

- (1) From a standing position at a distance of fifteen (15) yards, three (3) rounds of "00" buckshot in twelve (12) seconds;
- (2) From a standing position at a distance of ten (10) yards, three (3) rounds of "00" buckshot in ten (10) seconds;
- (3) From a standing position at a distance of five (5) yards, three (3) rounds of "00" buckshot in ten (10) seconds; or
- (4) An alternate course of fire may be approved by the director upon receipt of written application.

(b) A biennial familiarization of six (6) rounds of "00" buckshot shall be required for renewal of a commissioned security officer. The course of fire shall be as outlined in subsection (a) of this section reducing the number of rounds from three (3) to two (2) with a commensurate halving of time in each category.

(c) The category for any shotgun is STG.

§35.147. Certificates of Completion and Training Records.

(a) A department approved training school shall:

- (1) Issue an original certificate of completion to each qualifying student within seven (7) days after the student qualifies;
- (2) Maintain adequate records to show attendance, progress and grades of students and maintain on file a copy of each certificate issued to students at the department approved training school;
- (3) Make all required records available to investigators employed by the department for inspection during reasonable business hours; and
- (4) Retain all training records for twenty-four (24) months from the date of completion of training.

(b) The certificate of completion shall reflect the particular course or courses completed by a student during the training period.

(1) Certificates of completion for Level II shall contain the:

- (A) Name and approval number of the school;
- (B) Date of completion;
- (C) Name, signature, and approval number of training instructor; and
- (D) Full name and last six (6) digits of social security number of student.

(2) Certificates of completion for Level III and IV shall contain the:

(A) Name and approval number of the school;

(B) Date of firearm training completion (Level III only);

(C) Name, signature, and approval number of classroom and/or firearm training instructor;

(D) Full name and last six (6) digits of the social security number of student; and

(F) The specific date of firearm qualification along with the name and approval number of the firearms instructor on those certificates designating completion of Level III.

(3) Certificate of completion for firearms qualification (firearm proficiency) shall contain the:

(A) Name and approval number of the school;

(B) Name, signature, and approval number of firearms training instructor;

(C) Full name and last six (6) digits of the social security number of student;

(D) Firearms completion date;

(E) Note the category of firearm as defined in this chapter;

(F) Note the caliber of firearm; and

(G) Be on a certificate form designed or approved by the department.

(4) Certificates of completion for alarm systems installation or sales training shall contain:

(A) The name and approval number of the school;

(B) The name, signature and approval number of training instructor;

(C) The full name and last six (6) digits of the social security number of student;

(D) The date of final completion of the entire course; and

(E) The words "Has successfully completed the alarm installers or alarm systems salespersons alarm training school approved by the Texas Department of Public Safety."

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER M. CONTINUING EDUCATION

37 TAC §35.161, §35.162

The Texas Department of Public Safety (the department) proposes new §35.161 and §35.162, concerning Continuing Education. This new subchapter is proposed simultaneously with the repeal of current Subchapter M consisting of §§35.201 - 35.205. The proposed new subchapter is intended to reorganize, update, and consolidate the rules governing the private security program and to generally improve the clarity of the related rules.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period these rules are in effect, the public benefit anticipated as a result of enforcing these rules will be improved administrative efficiency, transparency, and compliance with the statutes and regulations pertaining to the private security industry in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter and Texas Government Code, §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Occupations Code, §1702.061(b) and Texas Government Code, §2001.039 are affected by this proposal.

§35.161. Continuing Education Requirements.

(a) A license, registration, endorsement, or commission may not be renewed until the required minimum hours of department approved continuing education credits have been earned in accordance with the Act and this chapter. Proof of the required continuing education must be maintained by the employer and contained in the personnel

file of the registrant's employing company. All registrants shall indicate they have completed the required minimum hours of department approved continuing education credits on their application for renewal. A renewal application shall also include the name of the school, school number, seminar number, seminar date, and credits earned.

(b) Nonparticipating owners, partners, shareholders, noncommissioned security officers, and administrative support personnel are specifically exempted from the continuing education requirements.

(c) All registrants not specifically addressed in this section shall complete a total of eight (8) hours of continuing education, seven (7) hours of which must be in subject matter that relates to the type of registration held, and one (1) hour of which must cover ethics. Following the initial registration period, qualified managers of Class B licensed companies may take a one (1) hour course devoted to changes in laws and rules applicable to the security industry, as a substitute for the above one (1) hour ethics requirement.

(d) Private investigators and managers of Class A and Class C licenses with more than fifteen (15) years of continued registration as a private investigator or manager of a Class A or Class C license shall complete a total of twelve (12) hours of continuing education, eight (8) hours of which must be in subject matter that relates to the type of registration held, two (2) hours of which must cover ethics, and two (2) hours of which must involve the review of the Act and the rules of this chapter.

(e) Private Investigators and managers of Class A and Class C licenses with less than fifteen (15) years of continued registration as a private investigator or manager of a Class A or Class C license shall complete a total of eighteen (18) hours of continuing education, fourteen (14) of which must be in subject matter that relates to the type of registration held, two (2) hours of which must cover ethics, and two (2) hours of which must involve the review of the Act and the rules of this chapter.

(f) Any person registered as a private investigator who fails to complete the required continuing education during the twenty-four (24) months of an initial registration is not eligible to make a new or renewal application until such time as the training requirement for the previous registration period has been satisfied.

(g) Commissioned security officers and personal protection officers shall complete six (6) hours of continuing education. Continuing education for commissioned security officers and personal protection officers must be taught by schools and instructors approved by the department to instruct commissioned security officers as defined in the Act. Commissioned security officers shall submit a firearms proficiency certificate along with the renewal application.

(h) During the first twelve (12) months of initial registration, each person employed as an alarm system installer or alarm systems salesperson must complete Alarm Level I training, consisting of sixteen (16) hours of classroom instruction or equivalent online course as approved by the department, with two (2) hours covering the National Electrical Code (NEC) as it applies to low voltage. Any person employed as an alarm systems installer or alarm systems salesperson must earned eight (8) hours of continuing education credits in an alarm related field, with one (1) hour covering the National Electrical Code (NEC) as it applies to low voltage, during each subsequent twenty-four (24) month period. This requirement must be satisfied prior to the expiration date of registration in order to renew the registration.

(i) For the protection of the installer and the general public, the work of an alarm system installer who has not completed the required sixteen (16) hours of instruction must be overseen by an installer who

has completed the required sixteen (16) hours of instruction. The oversight required under this section need not involve direct physical supervision, but the overseeing installer is responsible for ensuring the installation complies with all applicable requirements and regulations.

(j) Any person registered as an alarm systems installer or salesperson who fails to complete sixteen (16) hours of training during the twenty-four (24) months of initial licensure, or who fails to complete eight (8) hours of continuing education during any subsequent licensure period is not eligible to make a new or renewal application until such time as all training requirements for the previous license period have been satisfied.

(k) Alarm monitors shall complete four (4) hours of continuing education in subject matter that relates to the duties and responsibilities of an alarm monitor.

(l) All persons registered or licensed as locksmiths must complete sixteen (16) hours of continuing education every two (2) years.

(m) Attendees of continuing education courses shall maintain certificates of completion furnished by the school director in their files for a period of two (2) years. Attendees shall furnish the department with copies of all certificates of completion upon request.

§35.162. Continuing Education Schools.

(a) Except as otherwise provided by this subchapter, all continuing education credits must be earned through department approved continuing education schools.

(b) All department approved continuing education schools shall comply with:

(1) Each school must identify to the department a school director as its agent responsible for ensuring the school's compliance with this subchapter, including the maintenance of attendance records, the provision of such records to department personnel upon request, and the verification of curricula and instructors' qualifications. The failure of this individual to perform these duties or to otherwise comply with this subchapter may result in the cancellation of the school's certificate of approval and the rejection of claims for continuing education credit obtained from that school.

(2) School attendance records shall include:

(A) Subjects taught in each course of instruction;

(B) Total hours of each course of instruction and the hours instructed on each subject;

(C) Date of instruction;

(D) Name, license number, and date(s) of attendance for each individual that attended a course of instruction; and

(E) Name and qualifications of instructor.

(3) Schools shall issue certificates of attendance to registrants or licensees attending a course of instruction. The certificates of attendance shall contain the name and license number of the attendee, the date of attendance, the number of hours of attendance, and the course(s) of instruction attended. Each certificate shall be signed and dated by the school director.

(4) Schools shall maintain all records required by this section for a period of two (2) years.

(5) The school shall provide copies of all records required under this subchapter to the department upon request.

(6) The school director shall verify that the curriculum of each continuing education course offered is in compliance with this chapter.

(7) The school director shall verify the qualifications of each instructor.

(c) Attendees of courses of continuing education shall maintain certificates of completion furnished by the school director in their files for a period of two (2) years. Attendees shall furnish the department with copies of all certificates of completion upon request.

(d) Licensed companies with ten (10) or more registered employees may make a written request for a letter of exemption allowing them to provide continuing education to those employees registered under the requesting company's license. Such requests shall be addressed to the department. A letter of exemption granted under this section shall be valid for two (2) years. To qualify for a letter of exemption, the company must appoint a training director, assure that all training is in compliance with all related administrative rules, maintain proof of all training, and provide each employee with a certificate of training as required by this section. There is no annual fee associated with a letter of exemption issued under this subsection.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 23, 2014.

TRD-201400274

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: March 9, 2014

For further information, please call: (512) 424-5848



SUBCHAPTER N. EXEMPTIONS

37 TAC §§35.171 - 35.173

The Texas Department of Public Safety (the department) proposes new §§35.171 - 35.173, concerning Exemptions. This new subchapter is proposed simultaneously with the repeal of current Subchapter N consisting of §35.221 and §35.222. The proposed new subchapter is intended to reorganize, update, and consolidate the rules governing the private security program and to generally improve the clarity of the related rules.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period these rules are in effect, the public benefit anticipated as a result of enforcing these rules will be improved administrative efficiency, transparency, and compliance

with the statutes and regulations pertaining to the private security industry in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter and Texas Government Code, §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Occupations Code, §1702.061(b) and Texas Government Code, §2001.039 are affected by this proposal.

§35.171. Unlicensed General Contractors or Other Intermediaries.

An unlicensed general contractor or other intermediary may not offer to provide and may not provide a regulated service unless the contract expressly includes:

(1) The offer, bid, or proposal and any related advertisements must clearly and conspicuously state that the general contractor or broker is not licensed to perform the service in question and that the regulated service is to be provided exclusively by a licensed party;

(2) The contract and any bid or offer to perform a regulated service must identify the licensee by name and license number;

(3) The licensed subcontractor must be an express party to the contract; and

(4) The contract must clearly and conspicuously provide that the licensee is fully responsible for the regulated service and that the unlicensed general contractor will have no involvement in the regulated service.

§35.172. Certain Locksmith Services.

(a) An owner or employee of a retail establishment open to the general public may perform work on a mechanical security device within the confines of the establishment, provided the work is limited to servicing products sold by the establishment, or duplicating keys.

(b) The installation of a pre-keyed lockset may be performed by an unlicensed person, so long as the installer is hired directly by the recipient of the service, is not employed by or under contract with the retail establishment from which the lockset was purchased and the installation involves no rekeying or other internal manipulation of the locking mechanism or of any existing mechanical security devices.

(c) Repossession agents who are exclusively engaged in the business of repossession are exempted from licensure under the Act while using their own equipment and employees to decode or make keys, or to install or repair locks for the property repossessed. Any third party contractor engaged to perform such services must be licensed as a locksmith.

(d) The exemptions listed in subsection (a), (b), or (c) of this section apply only if the person does not use the term "locksmith" or any similar term, or otherwise create the impression to a reasonable consumer that the person is a licensed locksmith.

§35.173. Electronic Access Control Device.

This chapter does not apply to manufacturers, manufacturers' distributors, or installers of electronic access control devices whose sole intended purpose is to provide the public with convenient and unrestricted access, such as automatic pedestrian doors.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



SUBCHAPTER O. ACTIVE MILITARY AND SPOUSES - SPECIAL CONDITIONS

37 TAC §§35.181 - 35.184

The Texas Department of Public Safety (the department) proposes new §§35.181 - 35.184, concerning Active Military and Spouses - Special Conditions. This new subchapter is proposed simultaneously with the repeal of current Subchapter O consisting of §§35.231 - 35.233. The proposed new subchapter is intended to reorganize, update, and consolidate the rules governing the private security program and to generally improve the clarity of the related rules.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period these rules are in effect, the public benefit anticipated as a result of enforcing these rules will be improved administrative efficiency, transparency, and compliance with the statutes and regulations pertaining to the private security industry in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter and Texas Government Code, §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Occupations Code, §1702.061(b) and Texas Government Code, §2001.039 are affected by this proposal.

§35.181. Exemption from Penalty for Failure to Renew in Timely Manner.

An individual who holds a registration, commission, or license issued under the Act is exempt from any increased fee or other penalty for failing to renew the license in a timely manner if the individual establishes to the satisfaction of the department the individual failed to renew the license in a timely manner because the individual was on active duty in the United States Armed Forces serving outside this state.

§35.182. Extension of Certain Deadlines for Active Military Personnel.

A person who holds a registration, commission, or license issued under the Act, who is a member of the state military forces or a reserve component of the armed forces of the United States, and who is ordered to active duty by proper authority is entitled to an additional amount of time, equal to the total number of years or parts of years the person serves on active duty, to complete:

(1) Any continuing education requirements; and

(2) Any other requirement related to the renewal of the person's license.

§35.183. Alternative License Procedure for Military Spouse.

(a) An individual who is the spouse of a person serving on active duty as a member of the armed forces of the United States may apply for a license under this section if the individual:

(1) Holds a current license issued by another state with licensing requirements substantially equivalent to the Act's requirements for the license; or

(2) Within the five (5) years preceding the application date held a license in this state that expired while the applicant lived in another state for at least six (6) months.

(b) The department may accept alternative demonstrations of professional competence in lieu of existing experience, training, or educational requirements.

§35.184. Credit for Military Experience and Training.

(a) Verified military service, training, or education that relates to the registration, commission, or license for which a military service member or military veteran has applied will be credited toward the respective experience or training requirements.

(b) This section does not apply to an applicant who:

(1) Holds a restricted license issued by another jurisdiction; or

(2) Is ineligible for the registration, commission, or license under the Act or this chapter, based on a disqualifying criminal history.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 23, 2014.

TRD-201400276

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848

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Breann Waymire
11th Grade



ADOPTED RULES

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

TITLE 10. COMMUNITY DEVELOPMENT PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.10

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC §1.10, concerning Public Comment Procedures, without changes to the proposed text as published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8492). The text of the rule will not be republished.

REASONED JUSTIFICATION. The Board finds that the efficiency of meetings and the effectiveness and value of public testimony can be improved by limiting public discussion of matters scheduled for future meetings where appropriate time for public comment will be available. The Board additionally finds that requiring presenters to provide to staff, prior to the Board meeting, any materials intended to be handed out at a Board meeting will add to the efficiency of the meeting and the testimonial value of the materials to the Board and public. Accordingly, the Board adopts the amendments allowing the Board to limit discussion of items scheduled for future meetings, and requiring presenters to provide staff with copies of any materials the presenter wishes to use at a meeting prior to the meeting.

PUBLIC COMMENTS. The Department accepted public comments between November 29, 2013, and December 30, 2013. Comments regarding the amendments were accepted in writing and by fax. No comments were received.

The Board approved the final order adopting the amendments on January 23, 2014.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the authority of Texas Government Code Annotated §2306.053 which authorizes the Department to adopt rules, and more specifically, Texas Government Code Annotated §2306.066(d) which requires the Board to develop and implement policies that provide the public a reasonable opportunity to appear before the Board and make comments on matters within its jurisdiction.

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

Filed with the Office of the Secretary of State on January 27, 2014.

TRD-201400301

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3959

SUBCHAPTER B. SECTION 504 OF THE REHABILITATION ACT OF 1973 AND THE FAIR HOUSING ACT

10 TAC §§1.201 - 1.212

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 1, Subchapter B, §§1.201 - 1.212, concerning Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act. Sections 1.206, 1.209, and 1.210 are adopted with changes to the proposed text as published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8494) and will be republished. Sections 1.201 - 1.205, 1.207, 1.208, 1.211, and 1.212 are adopted without changes to the proposed text as published and will not be republished.

REASONED JUSTIFICATION. The new sections are adopted to provide guidance on applicability of and compliance with federal requirements and to provide consistency in the construction requirements for all Multifamily Housing Developments.

Section 1.201 clarifies that §504 and Fair Housing apply to all Department programs. Section 1.202 provides definitions of terms used in 10 TAC Chapter 1, Subchapter B. Section 1.203 is the Department's policy regarding nondiscrimination against persons with Disabilities. Section 1.204 is the Department's Reasonable Accommodation Policy. Section 1.205 states that compliance with the Fair Housing Act's design and construction requirements is HUD's Fair Housing Act Design Manual. Section 1.206 sets out construction standards for §504 of the Rehabilitation Act of 1973. Section 1.207 sets out distribution requirements for Multifamily Housing Developments. Section 1.208 states that at least one of each type of amenity must be accessible. Section 1.209 provides a definition of substantial alteration that applies to all Multifamily Housing Developments that submit a full application after January 1, 2014. Section 1.210 talks about alterations to existing Multifamily Housing Developments that submit a full application before January 1, 2014. Section 1.211 states that the 5% and 2% of accessible units apply to the total number of units in the Development.

Section 1.212 points the public to the Department's website for additional information.

SUMMARY OF PUBLIC COMMENTS AND STAFF RECOMMENDATION.

Comments were accepted from November 29, 2013, through December 30, 2013, with comments received from David Mintz on behalf of the Texas Apartment Association (TAA).

1. §1.206(b)(2) and (3)

COMMENT SUMMARY: Commenter suggested that the 2010 ADA Standards should apply to tax credit and bond developments that apply for funds after the effective date of this rule rather than to tax credit and bond developments that are awarded after January 1, 2014. Similarly, the commenter suggested that the 2010 ADA Standards should apply to rehabilitation projects using HOME and NSP in the same way. Commenter expressed concern that projects in the pipeline may be adversely affected because they were designed under the Uniform Federal Accessibility Standards rather than ADA.

STAFF RESPONSE: Staff agrees that the ADA standards should not apply to developments that have already filed a full application with the Department but does not agree that the 2010 ADA standards should apply only to developments that apply for funds after the effective date of the rule because that date will be in the middle of an application cycle. Instead, staff suggests that the 2010 ADA standards should be applied to developments that submit a full application after January 1, 2014. This changes §1.206(a) as well; and two other sections that the commenter did not address (§1.209(b) and §1.210(a)). Staff recommends the following:

§1.206. Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1973.

(a) The following types of Multifamily Housing Developments must comply with the construction standards of §504 of the Rehabilitation Act of 1973, as further defined through the Uniform Federal Accessibility Standards (UFAS):

(1) New construction and reconstruction HOME and NSP Multifamily Housing Developments that began construction before March 12, 2012;

(2) Rehabilitation HOME and NSP Multifamily Housing Developments that submitted a full application for funding before January 1, 2014; and

(3) All Housing Tax Credit and Tax Exempt Bond Developments that were awarded after September 1, 2001 and submitted a full application before January 1, 2014.

(b) The following types of Multifamily Housing Developments must comply with the construction requirements of 2010 ADA standards:

(1) New construction and reconstruction HOME and NSP Multifamily Housing Developments that began construction after March 12, 2012;

(2) Rehabilitation HOME and NSP Multifamily Housing Developments that submit a full application for funding after January 1, 2014; and

(3) All Housing Tax Credit and Tax Exempt Bond Developments that submit a full application for funding after January 1, 2014.

(c) After March 12, 2012, Recipients of Emergency Solutions Grant and Homeless Housing and Services Program funds must comply with the 2010 ADA Standards.

§1.209. Substantial Alteration of Multifamily Housing Developments.

... (b) All Rehabilitation of Multifamily Housing Developments that submit full applications after January 1, 2014, will be treated as substantial alteration.

§1.210. Renovation of Elements for Multifamily Housing Developments.

(a) This section is not applicable for Developments that submitted full applications after January 1, 2014. ...

BOARD RESPONSE: Accepted staff's recommendation.

2. GENERAL

COMMENT SUMMARY: Commenter expressed concern about requiring tax credit and bond properties that do not receive HOME funds to comply with the 2010 ADA standards and asked for clarification if this is a policy change or required under federal law.

STAFF RESPONSE: Accessibility standards are an evolving area of law and the Department hopes that further guidance from the U.S. Department of Justice, U.S. Department of the Treasury, and the U.S. Department of Housing and Urban Development ("HUD") will be forthcoming. At this time, requiring tax credit and tax exempt bond developments to comply with the 2010 ADA standards may be viewed as a policy change. However, this decision promotes consistency and recognizes the emerging position of federal oversight bodies that this standard applies. In 2012, in preparation for the implementation of the 2010 ADA Standards, the Department conducted a series of workshops around the state. The vast majority of commenters expressed a preference that, insofar as possible, that the requirements for Multifamily Housing Developments remain the same across different programs to provide greater efficiencies for the State and greater certainty for the affected community and industry. HUD believes that the 2010 ADA Standards do apply to new construction involving federal funds administered by the Department. Hence these rules, insofar as possible, reflect consistent requirements for all Multifamily Housing Developments.

BOARD RESPONSE: Accepted staff's recommendation.

3. GENERAL

COMMENT SUMMARY: Commenter expressed an impression that there is not general awareness of what impact the new accessibility standards will have on the development process or in real terms. Commenter hopes that the Department will proactively educate developers, architects and engineers about the difference between the 2010 ADA Standards and UFAS.

STAFF RESPONSE: The Department and TAA have a long history of collaborating on educating TAA members and other affordable housing professionals. The Department recognizes TAA as providing valuable member services, including industry education. The Department looks forward to partnering with TAA in this area.

BOARD RESPONSE: Accepted staff's recommendation.

The Board adopted the new sections on January 23, 2014.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

§1.206. Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1973.

(a) The following types of Multifamily Housing Developments must comply with the construction standards of §504 of the Rehabilitation Act of 1973, as further defined through the Uniform Federal Accessibility Standards (UFAS):

(1) New construction and reconstruction HOME and NSP Multifamily Housing Developments that began construction before March 12, 2012;

(2) Rehabilitation HOME and NSP Multifamily Housing Developments that submitted a full application for funding before January 1, 2014; and

(3) All Housing Tax Credit and Tax Exempt Bond Developments that were awarded after September 1, 2001 and submitted a full application before January 1, 2014.

(b) The following types of Multifamily Housing Developments must comply with the construction requirements of 2010 ADA standards:

(1) New construction and reconstruction HOME and NSP Multifamily Housing Developments that began construction after March 12, 2012;

(2) Rehabilitation HOME and NSP Multifamily Housing Developments that submit a full application for funding after January 1, 2014; and

(3) All Housing Tax Credit and Tax Exempt Bond Developments that submit a full application for funding after January 1, 2014.

(c) After March 12, 2012, Recipients of Emergency Solutions Grant and Homeless Housing and Services Program funds must comply with the 2010 ADA Standards.

§1.209. Substantial Alteration of Multifamily Housing Developments.

(a) When a Recipient undertakes Alterations to one or more structural elements in a Development that contains fifteen or more units, which was built before July 11, 1988 and which lacks the required minimum of 5% of units that are accessible to persons with mobility impairments, it must meet accessibility requirements. If the total cost of the alterations is 75% or more of the Replacement Cost of the completed property, then the Recipient must make a minimum of 5% of the units in the property accessible for persons with mobility impairments, and a minimum of 2% of the units accessible for persons with visual and hearing impairments. *(Source: 24 CFR §8.23-(a).)* EXAMPLE: The total development cost for a planned alteration of a 40 unit apartment building with no accessible unit amounts to \$80,000 per unit and the Replacement Cost per unit is \$100,000. Because the cost of the alterations is more than 75% of the Replacement Cost of the unit, the Recipient must make a minimum of 5% of the 40 units, or at least two, of the units accessible to persons with mobility impairments and at least 2%, or one unit, accessible to people with visual and hearing impairments.

(b) All Rehabilitation of Multifamily Housing Developments that submit full applications after January 1, 2014, will be treated as substantial alteration.

§1.210. Renovation of Elements for Multifamily Housing Developments.

(a) This section is not applicable for Developments that submitted full applications after January 1, 2014.

(b) When a Recipient has a Development which was built before July 11, 1988 and that contains five or more units but lacks the required 5% of units that are accessible to people with mobility impairments, when the recipient undertakes Alterations to a structural element that are not substantial as defined in §1.209 of this subchapter (relating to Substantial Alteration of Multifamily Housing Developments).

(1) Those Alterations must be accessible, to the maximum extent feasible, until at least 5% of the units are fully accessible for persons with mobility impairments. If the 5% requirement is met, no other structural Alterations are required to units except to provide reasonable accommodations to individuals with disabilities.

(2) If Alterations of single elements (such as replacement of a bathtub or a door) or spaces (such as kitchens or bathrooms) occur in a single unit and when the alterations are considered as a group amount to an alteration of the entire unit, the Recipient must make the entire dwelling unit accessible until 5% of the units are accessible to persons with mobility impairments.

(3) When the Recipient is not altering the entire unit, all of the single elements or spaces that are being altered must be made accessible unless at least 5% of the units in the project already comply fully with the UFAS, requirements for persons with mobility impairments. If at least 5% of the units comply with UFAS, no additional single elements need be made accessible except to provide Reasonable Accommodation for an individual with a Disability.

(4) Recipients are encouraged to examine existing units for compliance with UFAS and ensure that at least 5% of the units in a property are accessible. When at least 5% of the units comply with UFAS requirements for accessibility, individual elements need not comply with accessibility requirements when they are altered.

(5) Recipients are encouraged, but not required, to make at least an additional 2% of the units being altered comply with UFAS requirements for persons with hearing and vision impairments, if such units do not already exist.

(6) Completion of minor maintenance required to maintain a property in a decent, safe and sanitary condition is generally considered to be normal. *(24 CFR §8.3, Definition of Alteration)*

(A) EXAMPLE: A Development is remodeling all of the bathrooms throughout the property by replacing plumbing, fixtures, and cabinets. Remodeling the bathroom is an alteration to a space. Unless the property already has a minimum of 5% of its units that comply with UFAS to serve people with mobility impairments, 100% of the bathrooms remodeled must be made accessible until the property has a minimum of 5% of its units compliant with UFAS.

(B) EXAMPLE: A Development is remodeling all of the kitchens throughout a property by replacing stoves and refrigerators. Because this is not an alteration to a structural element, no structural elements must be made accessible.

(C) EXAMPLE: A Development is renovating its heating system by replacing furnaces, ductwork and vents. This is not an alteration that triggers compliance with this section because it is the replacement of a mechanical system.

(D) EXAMPLE: A Development has 100 units and 6 of the units are for persons with mobility impairments. They comply with UFAS and are on an Accessible Route. The property is remodeling all of the bathrooms throughout the property by replacing plumbing, fixtures, and cabinets. None of the remodeled bathrooms need be made

accessible because the property already has at least 5% of its units that comply with UFAS.

(E) EXAMPLE: A Development that was built before 1988 has 100 units and none of them comply with the UFAS requirements. The Development is replacing all of the roofs as part of regularly scheduled maintenance and repair. No units are required to be made accessible because the work being performed is regular maintenance and repair. Reroofing is specifically not considered an alteration.

(F) EXAMPLE: A Development has 100 units and only three of those units (or 3%) comply with UFAS for persons with mobility impairments. The property is renovating 10 units, but the cost of renovation is only 50% of the cost of replacing the completed property, so this is not a substantial alteration. Because the entire unit is being renovated, two of the renovated units must comply with UFAS in order to provide a minimum of 5% of the total number of units that are accessible to people with mobility impairments.

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

Filed with the Office of the Secretary of State on January 27, 2014.

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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959



CHAPTER 60. COMPLIANCE ADMINISTRATION

SUBCHAPTER B. ACCESSIBILITY REQUIREMENTS

10 TAC §§60.201 - 60.211

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 60, Subchapter B, §§60.201 - 60.211, concerning Accessibility Requirements, without changes to the proposal as published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8499).

REASONED JUSTIFICATION. The sections are repealed to allow for the adoption of new rules which will reorganize and clarify existing requirements. The adoption of new Chapter 1, Subchapter B, §§1.201 - 1.212, concerning Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act, is published concurrently with this repeal in this issue of the *Texas Register*.

PUBLIC COMMENTS. The Department accepted public comments between November 29, 2013, and December 30, 2013. Comments regarding the repeal were accepted in writing and by fax. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on January 23, 2014.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

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

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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959



CHAPTER 90. MIGRANT LABOR HOUSING FACILITIES

10 TAC §90.8

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC §90.8, concerning Forms, without changes to the proposed text as published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8502). The text of the rule will not be republished.

REASONED JUSTIFICATION. The Board finds that the current application and renewal application forms contain incorrect contact information. Moreover, the Board finds that by including certain original license information on the forms, processing of new applications or renewals could be done more efficiently. Accordingly, the forms are amended to update the Department's contact information and include a new provision to allow internal tracking of original license information.

PUBLIC COMMENTS. The Department accepted public comments between November 29, 2013, and December 30, 2013. Comments regarding the proposed amendments were accepted in writing and by fax. No comments were received.

The Board approved the final order adopting the amendments on January 23, 2014.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the authority of Texas Government Code Annotated §2306.053 which authorizes the Department to adopt rules, and more specifically, Texas Government Code Annotated §2306.923, which requires the Department to promulgate application forms to be used in licensing Migrant Labor Housing Facilities.

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

Filed with the Office of the Secretary of State on January 27, 2014.

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION

16 TAC §25.43

The Public Utility Commission of Texas (commission) adopts amendments to §25.43, relating to Provider of Last Resort (POLR), with changes to the proposed text as published in the August 23, 2013, issue of the *Texas Register* (38 TexReg 5390).

The amendments are for the limited purposes of allowing a Large Service Provider (LSP) to request the commission designate another REP that is affiliated with the LSP and meets certain criteria to provide POLR service on behalf of the LSP, delete dated language, and make minor grammatical changes. The amendments are competition rules subject to judicial review as specified in the Public Utility Regulatory Act (PURA) §39.001(e). The amendments are adopted under Project No. 41277.

The commission received comments on the proposed amendments from the Steering Committee of Cities Served by Oncor (Cities) and the Retail Electric Provider Coalition (REP Coalition). The commission also received reply comments from the REP Coalition. The REP Coalition was composed of Alliance for Retail Markets (ARM); Reliant Energy Retail Services, LLC; the Texas Energy Association of Marketers (TEAM); and TXU Energy Retail Company LLC. The participating members of ARM were: Champion Energy Services, LLC; Constellation NewEnergy Inc; Direct Energy, LP; Green Mountain Energy Company and Noble Americas Energy Solutions LLC. The participating members of TEAM were: Accent Energy d/b/a IGS Energy, Cirro Energy, Just Energy, Spark Energy, StarTex Power, Stream Energy, TriEagle Energy, and TruSmart Energy. The commission did not receive a request for a public hearing.

General Position of Commenters

Cities supported the commission's efforts to ensure POLR service is available to retail customers but expressed concerns that the proposed amendments lack sufficient provisions to protect retail customers. Cities offered language on specific subsections as discussed below.

The REP Coalition supported adoption of the proposed amendments with some changes as discussed below. In its reply comments, the REP Coalition responded to the proposals offered by Cities.

Summary of Comments

Subsection (e)

Cities expressed concern that an LSP might attempt to avoid association of its brand and reputation with an inferior quality of service or excessive pricing that may result from a designated affiliate providing POLR service. Cities recommended that the commission adopt language that would require the designated LSP affiliate to include conspicuous notice that the LSP is affiliated with the LSP on all communications with its POLR customers or potential customers.

The REP Coalition opposed Cities' proposal and noted that the commission's rules allow REPs to use up to five assumed names at any one time. Requiring the LSP affiliate to continually reference the original LSP would not further educate the customer as advocated by Cities and would only serve to confuse the customer about who is providing their service.

Commission Response

The commission understands Cities' concerns about the potential of an LSP affiliate providing an inferior quality of service or service at an excessive price. However, all REPs and POLRs are required to meet the same service standards. Under the adopted rule, the LSP retains full responsibility for the provision of POLR service by the designated affiliate and remains liable for any violations. The commission believes that the LSP should also retain responsibility for all financial obligations of the LSP affiliate associated with the provisioning of POLR service and amends this subsection accordingly.

The commission agrees with the REP Coalition that requiring the LSP affiliate to include notice that it is affiliated with the LSP will only lead to customer confusion as to who the service provider is. Therefore, the commission does not make this change recommended by Cities.

Subsection (h)

The REP Coalition agreed with the proposed deletion of language adopted by the commission in May 2009 in Project No. 35769 that applied to POLR providers during the 2009-2010 transition period since the term has expired. However, the REP Coalition pointed out that the commission proposal failed to delete the entirety of the transitional language and recommended that the last sentence of this subsection also be deleted.

Commission Response

The commission agrees with the REP Coalition and modifies §25.43(h) by deleting the last sentence in this subsection.

Subsection (k)(1)

Cities stated that requests from an LSP to designate an affiliate to provide POLR service on its behalf should be given a project number and that notice should be published in the *Texas Register* to allow a minimum of 30 days for public comment on the potential market or customer impact of transferring POLR duties to an LSP affiliate. In addition, commission staff should review the affiliate's financial and technical qualification to perform POLR duties.

The REP Coalition recommended that the commission reject Cities' proposal to allow public comment on an LSP's request for an LSP affiliate to provide POLR service on behalf of the LSP. The existing rule does not allow for public comment on selection of the LSP and it is unnecessary to allow expanded comment if the LSP subsequently seeks to have one of its affiliates pro-

vide POLR service on its behalf since the LSP is the one that remains liable for the provision of POLR service. Additionally, the proposed rule contains adequate safeguards through commission staff review to ensure that an LSP affiliate is eligible and qualified to provide POLR service on behalf of the LSP. The proposed rule also provides a process by which the LSP affiliate designation may be challenged by ERCOT or a TDU.

The REP Coalition recommended that §25.43(k)(1) include a requirement that the LSP affiliate be certificated to provide retail electric service to be consistent with the intent of §25.43(k)(2).

Commission Response

The commission does not agree with the Cities' argument that requests from an LSP to designate an affiliate to provide POLR service on its behalf should be given a project number and that notice should be published in the *Texas Register* to allow a minimum of 30 days for public comment on the potential market or customer impact of transferring POLR duties to an LSP affiliate. The commission believes that requiring LSPs to file its request to have an LSP affiliate provide POLR service on its behalf at least 30 days prior to the LSP providing POLR service will give commission staff adequate time to review the LSP affiliate's technical and financial ability to perform POLR duties. As noted by the REP Coalition, the LSP remains liable for the provision of POLR service and the LSP affiliate designation may be challenged by ERCOT or a TDU. The commission does not make any change to this subsection based on Cities' proposal.

The commission agrees with the REP Coalition that this subsection should be clarified to include the requirement that the LSP affiliate be certificated to provide retail electric service and amends this subsection accordingly.

Subsection (k)(2)

Cities expressed concern that the smaller size of a designated LSP affiliate may adversely affect POLR customers and recommended that the commission adopt language to require the LSP affiliate to commit to maintaining no less than the level of customer service and access that the LSP currently provides to POLR customers in the service territory. Cities opined that LSP service may exceed the minimum qualifications as a REP pursuant to §25.107 and the commission should develop a form to elicit information about how the LSP intends to comply with its POLR commitment. Staff should then use the information to determine the affiliate's eligibility to serve as the LSP POLR on behalf of the LSP. Cities also proposed additional language to require the LSP to make a commitment to shield the affiliate from any bankruptcy proceeding involving the LSP or other affiliates of the LSP. Staff's review may include an evaluation of the LSP's ability to protect the affiliate from a bankruptcy proceeding.

The REP Coalition disagreed with Cities that any additional language was needed in §25.43(k)(2) concerning the level of customer service from the LSP affiliate since all REPs must meet the customer service standards in the commission's rules and the rules apply to both REPs and POLR service providers. Since proposed §25.43(e)(3) provides that the LSP retains full responsibility for the provision of POLR service by the designated affiliate and remains liable for any violations, the LSP has a vested interest in ensuring that its LSP affiliate is qualified to provide POLR service on its behalf in compliance with all relevant commission requirements.

The REP Coalition believed that the commission should reject Cities' proposal to require the LSP to make a commitment to

shield the affiliate from any bankruptcy proceeding involving the LSP or other affiliates of the LSP. Involvement of a REP in a bankruptcy reorganization does not mean the REP will default in the market or be unable to fulfill its POLR responsibilities. The rule includes mechanisms to address situations in which the LSP cannot fulfill its POLR duties. If the LSP cannot fulfill its responsibility, the rule allows the commission to relieve the LSP from its POLR obligations if the LSP shows that it cannot maintain its financial integrity if additional customers are transferred to it. The commission may also revoke a REP's designation as an LSP if the REP fails to provide POLR service consistent with the commission's rules or fails to maintain appropriate financial qualifications. The rule provides that the commission may then designate the next eligible REP as an LSP.

The REP Coalition proposed that §25.43(k)(2) be clarified that the affiliation to be shown should be between the LSP and the affiliate LSP and two additional grammatical edits.

Commission Response

The commission does not agree with the Cities that language be added to require the LSP affiliate to commit to maintaining no less than the level of customer service and access that the LSP currently provides to POLR customers in the service territory. The commission recognizes that each REP may provide different levels of service; however, the commission is requiring all REPs to meet the same customer protection rules and customer service standards. As the REP Coalition pointed out, the LSP retains full responsibility for the provision of POLR service by the LSP affiliate and remains liable for any violations. The commission believes that this responsibility and liability will help ensure that the LSP affiliate does not provide substandard service. The commission does not make the level of service change recommended by Cities.

The commission agrees with the REP Coalition that involvement of a REP in a bankruptcy proceeding does not mean that the REP will default in the market or fail to fulfill its POLR responsibilities. As stated above, the LSP retains full responsibility for the provision of POLR service in the event that the LSP affiliate fails to provide POLR service in accordance with the commission's rules. The commission does not make the bankruptcy shield requirement proposed by Cities. However, the commission is concerned that bankruptcy of a designated LSP affiliate could result in some operational liability and financial exposure to ERCOT and other market participants and amends this subsection to require the LSP to provide an affidavit from an officer of the LSP stating that the LSP will be responsible for all financial obligations of the LSP affiliate associated with the provisioning of POLR service on behalf of the LSP.

The commission agrees with the grammatical edits proposed by the REP Coalition and amends this subsection accordingly. Additionally, the commission agrees with the REP Coalition that the language in this subsection be clarified to show that the affiliation should be between the LSP and the affiliate LSP.

Subsection (k)(3)

Cities noted that this subsection provides an opportunity for the LSP or proposed affiliate to appeal the denial of an application through a contested case. Cities believed that this subsection should be clarified to indicate whether the contested case appeal must be heard by the commissioners or referred to the State of Office of Administrative Hearings. Cities also expressed concern about calling the contested case an appeal since the rule does not require staff to issue findings of fact, which would nor-

mally frame an appeal. Cities offered language to address its concerns.

The REP Coalition did not believe it necessary to adopt Cities' recommendation to clarify the appeal process in §25.43(k)(3) but did not oppose inclusion of the clarification.

Commission Response

The commission does not agree with the concerns raised by Cities concerning the need to clarify the process by which an LSP or an LSP affiliate may seek further review of a commission staff decision concerning the denial of an application to designate an LSP affiliate. The commission's proposed language conforms with the existing language in §25.43 concerning the process that a REP or VREP may "appeal" a commission staff decision concerning POLR eligibility to the commission. The commission therefore declines to make any change to this subsection.

Subsection (k)(4)

The REP Coalition recommended a limited number of changes to proposed subsection §25.43(k)(4) to provide clarity. Additionally, the REP Coalition suggested that this subsection be changed to delete and amend language concerning the customers who have been individually transferred to POLR service consistent with the commission's stated intent in its Final Order adopting revisions to §25.43 in Project No. 31416 that REPs are not to terminate customers to POLR service for any reason except pursuant to a mass transition.

Commission Response

The commission agrees with the comments of the REP Coalition and modifies §25.43(k)(4) to state that REPs are not to terminate customers to POLR service for any reason except pursuant to a mass transition.

Subsection (k)(6)

Cities proposed that the commission adopt language requiring the designated affiliate to provide the LSP copies of and any information concerning all complaints and disputes received from the LSP affiliate customers so that the LSP could not claim that they were unaware of any customer problems.

The REP Coalition stated that the rule should not mandate specific process requirements between the LSP and its affiliate. The proposed §25.43(e)(3) clearly states that the LSP is liable for violations of applicable laws by the LSP affiliate. To comply with the rule, the LSP may require its affiliates to provide copies of complaints and disputes or the LSP may require the affiliate to provide it with other information to ensure compliance with the commission's rules but the rule should not mandate or micro-manage the relationship between the LSP and its affiliate. The REP Coalition recommended that the commission deny Cities' proposed changes to §25.43(k)(6).

Commission Response

The commission does not agree with the Cities that it is necessary to require by rule that the designated affiliate provide copies of information to the LSP. The commission believes that it is important for the LSP to understand that it retains full responsibility for the provision of POLR service by the LSP affiliate and remains liable for any violations. That is why the commission is adopting §25.43(e)(3). The commission therefore declines to make any changes to this subsection.

Subsection (k)(8)

The REP Coalition opined that the reversion of the obligation to provide POLR service in this subsection is inconsistent with proposed subsection (e)(3) and proposed language. Since subsection (e)(3) states that the responsibility for the provision of POLR service remains with the LSP, the LSP would automatically be required to provide POLR service to ESI IDs in the event that the LSP affiliate fails to do so. The REP Coalition also proposed to define the POLR service requirements as those found in applicable laws and commission rules.

Commission Response

The commission agrees with the REP Coalition that this subsection could be interpreted to be inconsistent with subsection (e)(3) and that the POLR service requirements should be clarified to be those that are in applicable laws and commission rules. The commission modifies this subsection to clarify that the POLR service requirements are those that are in applicable laws and commission rules.

Subsection (o)

Consistent with its recommendation on §25.43(k)(4), the REP Coalition proposed changes to §25.43(o) to delete and amend language concerning the customers who have been individually transferred to POLR service consistent with the commission's stated intent in its Final Order adopting revisions to §25.43 in Project No. 31416 that REPs are not to terminate customers to POLR service for any reason except pursuant to a mass transition.

Commission Response

The commission agrees with the comments of the REP Coalition and modifies §25.43(o) to show that REPs may not terminate customers to POLR service for any reason except pursuant to a mass transition.

All comments, including any not specifically referenced herein, were fully considered by the commission.

The amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2011) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §39.101, which requires the commission to ensure that retail customer protections are established that entitle a customer to safe, reliable, and reasonably priced electricity, and other protections; and §39.106, which requires that the commission designate providers of last resort.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.101, and 39.106.

§25.43. Provider of Last Resort (POLR).

(a) Purpose. The purpose of this section is to establish the requirements for Provider of Last Resort (POLR) service and ensure that it is available to any requesting retail customer and any retail customer who is transferred to another retail electric provider (REP) by the Electric Reliability Council of Texas (ERCOT) because the customer's REP failed to provide service to the customer or failed to meet its obligations to the independent organization.

(b) Application. The provisions of this section relating to the selection of REPs providing POLR service apply to all REPs that are serving retail customers in transmission and distribution utility (TDU) service areas. This section does not apply when an electric cooperative or a municipally owned utility (MOU) designates a POLR provider for its certificated service area. However, this section is applicable when

an electric cooperative delegates its authority to the commission in accordance with subsection (r) of this section to select a POLR provider for the electric cooperative's service area. All filings made with the commission pursuant to this section, including filings subject to a claim of confidentiality, shall be filed with the commission's Filing Clerk in accordance with the commission's Procedural Rules, Chapter 22, Subchapter E, of this title (relating to Pleadings and other Documents).

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

(1) Affiliate--As defined in §25.107 of this title (relating to Certification of Retail Electric Providers (REPs)).

(2) Basic firm service--Electric service that is not subject to interruption for economic reasons and that does not include value-added options offered in the competitive market. Basic firm service excludes, among other competitively offered options, emergency or back-up service, and stand-by service. For purposes of this definition, the phrase "interruption for economic reasons" does not mean disconnection for non-payment.

(3) Billing cycle--A period bounded by a start date and stop date that REPs and TDUs use to determine when a customer used electric service.

(4) Billing month--Generally a calendar accounting period (approximately 30 days) for recording revenue, which may or may not coincide with the period a customer's consumption is recorded through the customer's meter.

(5) Business day--As defined by the ERCOT Protocols.

(6) Large non-residential customer--A non-residential customer who had a peak demand in the previous 12-month period at or above one megawatt (MW).

(7) Large service provider (LSP)--A REP that is designated to provide POLR service pursuant to subsection (j) of this section.

(8) Market-based product--For purposes of this section, a rate for residential customers that is derived by applying a positive or negative multiplier to the rate described in subsection (m)(2) of this section is not a market-based product.

(9) Mass transition--The transfer of customers as represented by ESI IDs from a REP to one or more POLR providers pursuant to a transaction initiated by the independent organization that carries the mass transition (TS) code or other code designated by the independent organization.

(10) Medium non-residential customer--A non-residential retail customer who had a peak demand in the previous 12-month period of 50 kilowatt (kW) or greater, but less than 1,000 kW.

(11) POLR area--The service area of a TDU in an area where customer choice is in effect.

(12) POLR provider--A volunteer retail electric provider (VREP) or LSP that may be required to provide POLR service pursuant to this section.

(13) Residential customer--A retail customer classified as residential by the applicable TDU tariff or, in the absence of classification under a tariff, a retail customer who purchases electricity for personal, family, or household purposes.

(14) Transitioned customer--A customer as represented by ESI IDs that is served by a POLR provider as a result of a mass transition under this section.

(15) Small non-residential customer--A non-residential retail customer who had a peak demand in the previous 12-month period of less than 50 kW.

(16) Voluntary retail electric provider (VREP)--A REP that has volunteered to provide POLR service pursuant to subsection (i) of this section.

(d) POLR service.

(1) There are two types of POLR providers: VREPs and LSPs.

(2) For the purpose of POLR service, there are four classes of customers: residential, small non-residential, medium non-residential, and large non-residential.

(3) A VREP or LSP may be designated to serve any or all of the four customer classes in a POLR area.

(4) A POLR provider shall offer a basic, standard retail service package to customers it is designated to serve, which shall be limited to:

(A) Basic firm service;

(B) Call center facilities available for customer inquiries; and

(C) Benefits for low-income customers as provided for under PURA §39.903 relating to the System Benefit Fund.

(5) A POLR provider shall, in accordance with §25.108 of this title (relating to Financial Standards for Retail Electric Providers Regarding the Billing and Collection of Transition Charges), fulfill billing and collection duties for REPs that have defaulted on payments to the servicer of transition bonds or to TDUs.

(6) Each LSP's customer billing for residential customers taking POLR service under a rate prescribed by subsection (m)(2) of this section shall contain notice to the customer that other competitive products or services may be available from the LSP or another REP. The notice shall also include contact information for the LSP, and the Power to Choose website, and shall include a notice from the commission in the form of a bill insert or a bill message with the header "An Important Message from the Public Utility Commission Regarding Your Electric Service" addressing why the customer has been transitioned to an LSP, a description of the purpose and nature of POLR service, and explaining that more information on competitive markets can be found at www.powertochoose.org, or toll-free at 1-866-PWR-4-TEX (1-866-797-4839).

(e) Standards of service.

(1) An LSP designated to serve a class in a given POLR area shall serve any eligible customer requesting POLR service or assigned to the LSP pursuant to a mass transition in accordance with the Standard Terms of Service in subsection (f)(1) of this section for the provider customer's class. However, in lieu of providing terms of service to a transitioned customer under subsection (f) of this section and under a rate prescribed by subsection (m)(2) of this section an LSP may at its discretion serve the customer pursuant to a market-based month-to-month product, provided it serves all transitioned customers in the same class and POLR area pursuant to the product.

(2) A POLR provider shall abide by the applicable customer protection rules as provided for under Subchapter R of this chapter (relating to Customer Protection Rules for Retail Electric Service), except that if there is an inconsistency or conflict between this section and Subchapter R of this chapter, the provisions of this section shall apply. However, for the medium non-residential customer class, the

customer protection rules as provided for under Subchapter R of this chapter do not apply, except for §25.481 of this title (relating to Unauthorized Charges), §25.485(a) - (b) of this title (relating to Customer Access and Complaint Handling), and §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider).

(3) An LSP that has received commission approval to designate one of its affiliates to provide POLR service on behalf of the LSP pursuant to subsection (k) of this section shall retain responsibility for the provision of POLR service by the LSP affiliate and remains liable for violations of applicable laws and commission rules and all financial obligations of the LSP affiliate associated with the provisioning of POLR service on its behalf by the LSP affiliate.

(f) Customer information.

(1) The Standard Terms of Service prescribed in subparagraphs (A) - (D) of this paragraph apply to POLR service provided by an LSP under a rate prescribed by subsection (m)(2) of this section.

(A) Standard Terms of Service, POLR Provider Residential Service:

Figure: 16 TAC §25.43(f)(1)(A) (No change.)

(B) Standard Terms of Service, POLR Provider Small Non-Residential Service:

Figure: 16 TAC §25.43(f)(1)(B) (No change.)

(C) Standard Terms of Service, POLR Provider Medium Non-Residential Service:

Figure: 16 TAC §25.43(f)(1)(C) (No change.)

(D) Standard Terms of Service, POLR Provider Large Non-Residential Service:

Figure: 16 TAC §25.43(f)(1)(D) (No change.)

(2) An LSP providing service under a rate prescribed by subsection (m)(2) of this section shall provide each new customer the applicable Standard Terms of Service. Such Standard Terms of Service shall be updated as required under §25.475(f) of this title (relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers).

(g) General description of POLR service provider selection process.

(1) All REPs shall provide information to the commission in accordance with subsection (h)(1) of this section. Based on this information, the commission's designated representative shall designate REPs that are eligible to serve as POLR providers in areas of the state in which customer choice is in effect, except that the commission shall not designate POLR providers in the service areas of MOUs or electric cooperatives unless an electric cooperative has delegated to the commission its authority to designate the POLR provider, in accordance with subsection (r) of this section.

(2) POLR providers shall serve two-year terms. The initial term for POLR service in areas of the state where retail choice is not in effect as of the effective date of the rule shall be set at the time POLR providers are initially selected in such areas.

(h) REP eligibility to serve as a POLR provider. In each even-numbered year, the commission shall determine the eligibility of certified REPs to serve as POLR providers for a term scheduled to commence in January of the next year.

(1) All REPs shall provide information to the commission necessary to establish their eligibility to serve as a POLR provider for the next term. REPs shall file, by July 10th, of each even-numbered year, by service area, information on the classes of customers they provide service to, and for each customer class, the number of ESI IDs the

REP serves and the retail sales in megawatt-hours for the annual period ending March 31 of the current year. As part of that filing, a REP may request that the commission designate one of its affiliates to provide POLR service on its behalf pursuant to subsection (k) of this section in the event that the REP is designated as an LSP. The independent organization shall provide to the commission the total number of ESI ID and total MWh data for each class. All REPs shall also provide information on their technical capability and financial ability to provide service to additional customers in a mass transition. The commission's determination regarding eligibility of a REP to serve as POLR provider under the provisions of this section shall not be considered confidential information.

(2) Eligibility to be designated as a POLR provider is specific to each POLR area and customer class. A REP is eligible to be designated a POLR provider for a particular customer class in a POLR area, unless:

(A) A proceeding to revoke or suspend the REP's certificate is pending at the commission, the REP's certificate has been suspended or revoked by the commission, or the REP's certificate is deemed suspended pursuant to §25.107 of this title (relating to Certification of Retail Electric Providers (REPs));

(B) The sum of the numeric portion of the REP's percentage of ESI IDs served and percentage of retail sales by MWhs in the POLR area, for the particular class, is less than 1.0;

(C) The commission does not reasonably expect the REP to be able to meet the criteria set forth in subparagraph (B) of this paragraph during the entirety of the term;

(D) On the date of the commencement of the term, the REP or its predecessor will not have served customers in Texas for at least 18 months;

(E) The REP does not serve the applicable customer class, or does not have an executed delivery service agreement with the service area TDU;

(F) The REP is certificated as an Option 2 REP under §25.107 of this title;

(G) The REP's customers are limited to its own affiliates;

(H) A REP files an affidavit stating that it does not serve small or medium non-residential customers, except for the low-usage sites of the REP's large non-residential customers, or commonly owned or franchised affiliates of the REP's large non-residential customers and opts out of eligibility for either, or both of the small or medium non-residential customer classes; or

(I) The REP does not meet minimum financial, technical and managerial qualifications established by the commission under §25.107 of this title.

(3) For each term, the commission shall publish the names of all of the REPs eligible to serve as a POLR provider under this section for each customer class in each POLR area and shall provide notice to REPs determined to be eligible to serve as a POLR provider. A REP may challenge its eligibility determination within five business days of the notice of eligibility by filing with the commission additional documentation that includes the specific data, the specific calculation, and a specific explanation that clearly illustrate and prove the REP's assertion. Commission staff shall verify the additional documentation and, if accurate, reassess the REP's eligibility. Commission staff shall notify the REP of any change in eligibility status within 10 business days of the receipt of the additional documentation. A REP may then appeal to the commission through a contested case if the REP does not agree

with the staff determination of eligibility. The contested status will not delay the designation of POLR providers.

(4) A standard form may be created by the commission for REPs to use in filing information concerning their eligibility to serve as a POLR provider.

(5) If ERCOT or a TDU has reason to believe that a REP is no longer capable of performing POLR responsibilities, ERCOT or the TDU shall make a filing with the commission detailing the basis for its concerns and shall provide a copy of the filing to the REP that is the subject of the filing. If the filing contains confidential information, ERCOT or the TDU shall file the confidential information in accordance with §22.71 of this title (relating to Filing of Pleadings, Documents, and Other Materials). Commission staff shall review the filing, and shall request that the REP demonstrate that it still meets the qualifications to provide the service. The commission staff may initiate a proceeding with the commission to disqualify the REP from providing POLR service. No ESI IDs shall be assigned to a POLR provider after the commission staff initiates a proceeding to disqualify the POLR provider, unless the commission by order confirms the POLR provider's designation.

(i) VREP list. Based on the information provided in accordance with this subsection and subsection (h) of this section, the commission shall post the names of VREPs on its webpage, including the aggregate customer count offered by VREPs. A REP may submit a request to be a VREP no earlier than June 1, and no later than July 31, of each even-numbered year. This filing shall include a description of the REP's capabilities to serve additional customers as well as the REP's current financial condition in enough detail to demonstrate that the REP is capable of absorbing a mass transition of customers without technically or financially distressing the REP and the specific information set out in this subsection. The commission's determination regarding eligibility of a REP to serve as a VREP, under the provisions of this section, shall not be considered confidential information.

(1) A VREP shall provide to the commission the name of the REP, the appropriate contact person with current contact information, which customer classes the REP is willing to serve within each POLR area, and the number of ESI IDs the REP is willing to serve by customer class and POLR area in each transition event.

(2) A REP that has met the eligibility requirements of subsection (h) of this section and provided the additional information set out in this subsection is eligible for designation as a VREP.

(3) Commission staff shall make an initial determination of the REPs that are to serve as a VREP for each customer class in each POLR area and publish their names. A REP may challenge its eligibility determination within five business days of the notice of eligibility by submitting to commission staff additional evidence of its capability to serve as a VREP. Commission staff shall reassess the REP's eligibility and notify the REP of any change in eligibility status within 10 business days of the receipt of the additional documentation. A REP may then appeal to the commission through a contested case if the REP does not agree with the staff determination of eligibility. The contested status will not delay the designation of VREPs.

(4) A VREP may file a request at any time to be removed from the VREP list or to modify the number of ESI IDs that it is willing to serve as a VREP. If the request is to increase the number of ESI IDs, it shall provide information to demonstrate that it is capable of serving the additional ESI IDs, and the commission staff shall make an initial determination, which is subject to an appeal to the commission, in accordance with the timelines specified in paragraph (3) of this subsection. If the request is to decrease the number of ESI IDs, the request shall be effective five calendar days after the request is filed

with the commission; however, after the request becomes effective the VREP shall continue to serve ESI IDs previously acquired through a mass transition event as well as ESI IDs the VREP acquires from a mass transition event that occurs during the five-day notice period. If in a mass transition a VREP is able to acquire more customers than it originally volunteered to serve, the VREP may work with commission staff and ERCOT to increase its designation. Changes approved by commission staff shall be communicated to ERCOT and shall be implemented for the current allocation if possible.

(5) ERCOT or a TDU may challenge a VREP's eligibility. If ERCOT has reason to believe that a REP is no longer capable of performing VREP responsibilities, ERCOT shall make a filing with the commission detailing the basis for its concerns and shall provide a copy of the filing to the REP that is the subject of the filing. If the filing contains confidential information, ERCOT or the TDU shall file it in accordance with §25.71 of this title (relating to General Procedures, Requirements and Penalties). Commission staff shall review the filing of ERCOT and if commission staff concludes that the REP should no longer provide VREP service, it shall request that the REP demonstrate that it still meets the qualifications to provide the service. The commission staff may initiate a proceeding with the commission to disqualify the REP from providing VREP service. No ESI IDs shall be assigned to a VREP after the commission staff initiates a proceeding to disqualify the VREP, unless the commission by order confirms the VREP's designation.

(j) LSPs. This subsection governs the selection and service of REPs as LSPs.

(1) The REPs eligible to serve as LSPs shall be determined based on the information provided by REPs in accordance with subsection (h) of this section. However, for new TDU service areas that are transitioned to competition, the transition to competition plan approved by the commission may govern the selection of LSPs to serve as POLR providers.

(2) In each POLR area, for each customer class, the commission shall designate up to 15 LSPs. The eligible REPs that have the greatest market share based upon retail sales in megawatt-hours, by customer class and POLR area shall be designated as LSPs. Commission staff shall designate the LSPs by October 15th of each even-numbered year, based upon the data submitted to the commission under subsection (h) of this section. Designation as a VREP does not affect a REP's eligibility to also serve as an LSP.

(3) For the purpose of calculating the POLR rate for each customer class in each POLR area, an EFL shall be completed by the LSP that has the greatest market share in accordance with paragraph (2) of this subsection. The Electricity Facts Label (EFL) shall be supplied to commission staff electronically for placement on the commission webpage by January 1 of each year, and more often if there are changes to the non-bypassable charges. Where REP-specific information is required to be inserted in the EFL, the LSP supplying the EFL shall note that such information is REP-specific.

(4) An LSP serving transitioned residential and small non-residential customers under a rate prescribed by subsection (m)(2) of this section shall move such customers to a market-based month-to-month product, with pricing for such product to be effective no later than either the 61st day of service by the LSP or beginning with the customer's next billing cycle date following the 60th day of service by the LSP. For each transition event, all such transitioned customers in the same class and POLR area must be served pursuant to the same product terms, except for those customers specified in subparagraph (B) of this paragraph.

(A) The notice required by §25.475(d) of this title to inform the customers of the change to a market-based month-to-month product may be included with the notice required by subsection (t)(3) of this section or may be provided 14 days in advance of the change. If the §25.475(d) notice is included with the notice required by subsection (t)(3) of this section, the LSP may state that either or both the terms of service document and EFL for the market-based month-to-month product shall be provided at a later time, but no later than 14 days before their effective date.

(B) The LSP is not required to transfer to a market-based product any transitioned customer who is delinquent in payment of any charges for POLR service to such LSP as of the 60th day of service. If such a customer becomes current in payments to the LSP, the LSP shall move the customer to a market-based month-to-month product as described in this paragraph on the next billing cycle that occurs five business days after the customer becomes current. If the LSP does not plan to move customers who are delinquent in payment of any charges for POLR service as of the 60th day of service to a market-based month-to-month product, the LSP shall inform the customer of that potential outcome in the notice provided to comply with §25.475(d) of this title.

(5) Upon a request from an LSP and a showing that the LSP will be unable to maintain its financial integrity if additional customers are transferred to it under this section, the commission may relieve an LSP from a transfer of additional customers. The LSP shall continue providing continuous service until the commission issues an order relieving it of this responsibility. In the event the requesting LSP is relieved of its responsibility, the commission staff designee shall, with 90 days' notice, designate the next eligible REP, if any, as an LSP, based upon the criteria in this subsection.

(k) Designation of an LSP affiliate to provide POLR service on behalf of an LSP.

(1) An LSP may request the commission designate an LSP affiliate to provide POLR service on behalf of the LSP either with the LSP's filing under subsection (h) of this section or as a separate filing in the current term project. The filing shall be made at least 30 days prior to the date when the LSP affiliate is to begin providing POLR service on behalf of the LSP. To be eligible to provide POLR service on behalf of an LSP, the LSP affiliate must be certificated to provide retail electric service; have an executed delivery service agreement with the service area TDU; and meet the requirements of subsection (h)(2) of this section, with the exception of subsection (h)(2)(B), (C), (D), and (E) of this section as related to serving customers in the applicable customer class.

(2) The request shall include the name and certificate number of the LSP affiliate, information demonstrating the affiliation between the LSP and the LSP affiliate, and a certified agreement from an officer of the LSP affiliate stating that the LSP affiliate agrees to provide POLR service on behalf of the LSP. The request shall also include an affidavit from an officer of the LSP stating that the LSP will be responsible and indemnify any affected parties for all financial obligations of the LSP affiliate associated with the provisioning of POLR service on behalf of the LSP in the event that the LSP affiliate defaults or otherwise does not fulfill such financial obligations.

(3) Commission staff shall make an initial determination of the eligibility of the LSP affiliate to provide POLR service on behalf of an LSP and publish their names. The LSP or LSP affiliate may challenge commission staff's eligibility determination within five business days of the notice of eligibility by submitting to commission staff additional evidence of its capability to provide POLR service on behalf of the LSP. Commission staff shall reassess the LSP affiliate's eligibility

and notify the LSP and LSP affiliate of any change in eligibility status within 10 business days of the receipt of the additional documentation. If the LSP or LSP affiliate does not agree with staff's determination of eligibility, either or both may then appeal the determination to the commission through a contested case. The LSP shall provide POLR service during the pendency of the contested case.

(4) ERCOT or a TDU may challenge an LSP affiliate's eligibility to provide POLR service on behalf of an LSP. If ERCOT or a TDU has reason to believe that an LSP affiliate is not eligible or is not performing POLR responsibilities on behalf of an LSP, ERCOT or the TDU shall make a filing with the commission detailing the basis for its concerns and shall provide a copy of the filing to the LSP and the LSP affiliate that are the subject of the filing. If the filing contains confidential information, ERCOT or the TDU shall file it in accordance with §25.71 of this title (relating to General Procedures, Requirements and Penalties). Commission staff shall review the filing and if commission staff concludes that the LSP affiliate should not be allowed to provide POLR service on behalf of the LSP, it shall request that the LSP affiliate demonstrate that it has the capability. The commission staff shall review the LSP affiliate's filing and may initiate a proceeding with the commission to disqualify the LSP affiliate from providing POLR service. The LSP affiliate may continue providing POLR service to ESI IDs currently receiving the service during the pendency of the proceeding; however, the LSP shall immediately assume responsibility to provide service under this section to customers who request POLR service, or are transferred to POLR service through a mass transition, during the pendency of the proceeding.

(5) Designation of an affiliate to provide POLR service on behalf of an LSP shall not change the number of ESI IDs served or the retail sales in megawatt-hours for the LSP for the reporting period nor does such designation relieve the LSP of its POLR service obligations in the event that the LSP affiliate fails to provide POLR service in accordance with the commission rules.

(6) The designated LSP affiliate shall provide POLR service and all reports as required by the commission's rules on behalf of the LSP.

(7) The methodology used by a designated LSP affiliate to calculate POLR rates shall be consistent with the methodology used to calculate LSP POLR rates in subsection (m) of this section.

(8) If an LSP affiliate designated to provide POLR service on behalf of an LSP cannot meet or fails to meet the POLR service requirements in applicable laws and Commission rules, the LSP shall provide POLR service to any ESI IDs currently receiving the service from the LSP affiliate and to ESI IDs in a future mass transition or upon customer request.

(9) An LSP may elect to reassume provisioning of POLR service from the LSP affiliate by filing a reversion notice with the commission and notifying ERCOT at least 30 days in advance.

(l) Mass transition of customers to POLR providers. The transfer of customers to POLR providers shall be consistent with this subsection.

(1) ERCOT shall first transfer customers to VREPs, up to the number of ESI IDs that each VREP has offered to serve for each customer class in the POLR area. ERCOT shall use the VREP list to assign ESI IDs to the VREPs in a non-discriminatory manner, before assigning customers to the LSPs. A VREP shall not be assigned more ESI IDs than it has indicated it is willing to serve pursuant to subsection (i) of this section. To ensure non-discriminatory assignment of ESI IDs to the VREPs, ERCOT shall:

(A) Sort ESI IDs by POLR area;

- (B) Sort ESI IDs by customer class;
- (C) Sort ESI IDs numerically;
- (D) Sort VREPs numerically by randomly generated number; and

(E) Assign ESI IDs in numerical order to VREPs, in the order determined in subparagraph (D) of this paragraph, in accordance with the number of ESI IDs each VREP indicated a willingness to serve pursuant to subsection (i) of this section. If the number of ESI IDs is less than the total that the VREPs indicated that they are willing to serve, each VREP shall be assigned a proportionate number of ESI IDs, as calculated by dividing the number that each VREP indicated it was willing to serve by the total that all VREPs indicated they were willing to serve, multiplying the result by the total number of ESI IDs being transferred to the VREPs, and rounding to a whole number.

(2) If the number of ESI IDs exceeds the amount the VREPs are designated to serve, ERCOT shall assign remaining ESI IDs to LSPs in a non-discriminatory fashion, in accordance with their percentage of market share based upon retail sales in megawatt-hours, on a random basis within a class and POLR area, except that a VREP that is also an LSP that volunteers to serve at least 1% of its market share for a class of customers in a POLR area shall be exempt from the LSP allocation up to 1% of the class and POLR area. To ensure non-discriminatory assignment of ESI IDs to the LSPs, ERCOT shall:

(A) Sort the ESI IDs in excess of the allocation to VREPs, by POLR area;

(B) Sort ESI IDs in excess of the allocation to VREPs, by customer class;

(C) Sort ESI IDs in excess of the allocation to VREPs, numerically;

(D) Sort LSPs, except LSPs that volunteered to serve 1% of their market share as a VREP, numerically by MWhs served;

(E) Assign ESI IDs that represent no more than 1% of the total market for that POLR area and customer class less the ESI IDs assigned to VREPs that volunteered to serve at least 1% of their market share for each POLR area and customer class in numerical order to LSPs designated in subparagraph (D) of this paragraph, in proportion to the percentage of MWhs served by each LSP to the total MWhs served by all LSPs;

(F) Sort LSPs, including any LSPs previously excluded under subparagraph (D) of this paragraph; and

(G) Assign all remaining ESI IDs in numerical order to LSPs in proportion to the percentage of MWhs served by each LSP to the total MWhs served by all LSPs.

(3) Each mass transition shall be treated as a separate event.

(m) Rates applicable to POLR service.

(1) A VREP shall provide service to customers using a market-based, month-to-month product. The VREP shall use the same market-based, month-to-month product for all customers in a mass transition that are in the same class and POLR area.

(2) Subparagraphs (A) - (C) of this paragraph establish the maximum rate for POLR service charged by an LSP. An LSP may charge a rate less than the maximum rate if it charges the lower rate to all customers in a mass transition that are in the same class and POLR area.

(A) Residential customers. The LSP rate for the residential customer class shall be determined by the following formula:

LSP rate (in \$ per kWh) = (Non-bypassable charges + LSP customer charge + LSP energy charge) / kWh used Where:

(i) Non-bypassable charges shall be all TDU charges and credits for the appropriate customer class in the applicable service territory and other charges including ERCOT administrative charges, nodal fees or surcharges, reliability unit commitment (RUC) capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kW used, where appropriate.

(ii) LSP customer charge shall be \$0.06 per kWh.

(iii) LSP energy charge shall be the sum over the billing period of the actual hourly Real-Time Settlement Point Prices (RTSPPs) for the customer's load zone that is multiplied by the number of kWhs the customer used during that hour and that is further multiplied by 120%.

(iv) "Actual hourly RTSPP" is an hourly rate based on a simple average of the actual interval RTSPPs over the hour.

(v) "Number of kWhs the customer used" is based either on interval data or on an allocation of the customer's total actual usage to the hour based on a ratio of the sum of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the hour to the total of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the customer's entire billing period.

(vi) For each billing period, if the sum over the billing period of the actual hourly RTSPP for a customer multiplied by the number of kWhs the customer used during that hour falls below the simple average of the RTSPPs for the load zone located partially or wholly in the customer's TDU service territory that had the highest simple average price over the 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during the customer's billing period, then the LSP energy charge shall be the simple average of the RTSPPs for the load zone partially or wholly in the customer's TDU service territory that had the highest simple average over the 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during the customer's billing period multiplied by 125%. This methodology shall apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.

(B) Small and medium non-residential customers. The LSP rate for the small and medium non-residential customer classes shall be determined by the following formula: LSP rate (in \$ per kWh) = (Non-bypassable charges + LSP customer charge + LSP demand charge + LSP energy charge) / kWh used Where:

(i) Non-bypassable charges shall be all TDU charges and credits for the appropriate customer class in the applicable service territory, and other charges including ERCOT administrative charges, nodal fees or surcharges, RUC capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kW used, where appropriate.

(ii) LSP customer charge shall be \$0.025 per kWh.

(iii) LSP demand charge shall be \$2.00 per kW, per month, for customers that have a demand meter, and \$50.00 per month for customers that do not have a demand meter.

(iv) LSP energy charge shall be the sum over the billing period of the actual hourly RTSPPs, for the customer's load zone that is multiplied by number of kWhs the customer used during that hour and that is further multiplied by 125%.

(v) "Actual hourly RTSPP" is an hourly rate based on a simple average of the actual interval RTSPPs over the hour.

(vi) "Number of kWhs the customer used" is based either on interval data or on an allocation of the customer's total actual usage to the hour based on a ratio of the sum of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the hour to the total of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the customer's entire billing period.

(vii) For each billing period, if the sum over the billing period of the actual hourly RTSPP for a customer multiplied by the number of kWhs the customer used during that hour falls below the simple average of the RTSPPs for the load zone located partially or wholly in the customer's TDU service territory that had the highest simple average over the 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during the customer's billing period, then the LSP energy charge shall be the simple average of the RTSPPs for the load zone located partially or wholly in the customer's TDU service territory that had the highest simple average price over the 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during the customer's billing period multiplied by 125%. This methodology shall apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.

(C) Large non-residential customers. The LSP rate for the large non-residential customer class shall be determined by the following formula: LSP rate (in \$ per kWh) = (Non-bypassable charges + LSP customer charge + LSP demand charge + LSP energy charge) / kWh used Where:

(i) Non-bypassable charges shall be all TDU charges and credits for the appropriate customer class in the applicable service territory, and other charges including ERCOT administrative charges, nodal fees or surcharges, RUC capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and KW used, where appropriate.

(ii) LSP customer charge shall be \$2,897.00 per month.

(iii) LSP demand charge shall be \$6.00 per kW, per month.

(iv) LSP energy charge shall be the appropriate RTSPP, determined on the basis of 15-minute intervals, for the customer multiplied by 125%, multiplied by the level of kilowatt-hours used. The energy charge shall have a floor of \$7.25 per MWh.

(3) If in response to a complaint or upon its own investigation, the commission determines that an LSP failed to charge the appropriate rate prescribed by paragraph (2) of this subsection, and as a result overcharged its customers, the LSP shall issue refunds to the specific customers who were overcharged.

(4) On a showing of good cause, the commission may permit the LSP to adjust the rate prescribed by paragraph (2) of this subsection, if necessary to ensure that the rate is sufficient to allow the LSP to recover its costs of providing service. Notwithstanding any other commission rule to the contrary, such rates may be adjusted on an interim basis for good cause shown and after at least 10 business days' notice and an opportunity for hearing on the request for interim relief. Any adjusted rate shall be applicable to all LSPs charging the rate prescribed by paragraph (2) of this subsection to the specific customer class, within the POLR area that is subject to the adjustment.

(5) For transitioned customers, the customer and demand charges associated with the rate prescribed by paragraph (3) of this subsection shall be pro-rated for partial month usage if a large non-residential customer switches from the LSP to a REP of choice.

(n) Challenges to customer assignments. A POLR provider is not obligated to serve a customer within a customer class or a POLR area for which the REP is not designated as a POLR provider, after a successful challenge of the customer assignment. A POLR provider shall use the ERCOT market variance resolution tool to challenge a customer class assignment with the TDU. The TDU shall make the final determination based upon historical usage data and not premise type. If the customer class assignment is changed and a different POLR provider for the customer is determined appropriate, the customer shall then be served by the appropriate POLR provider. Back dated transactions may be used to correct the POLR assignment.

(o) Limitation on liability. The POLR providers shall make reasonable provisions to provide service under this section to any ESI IDs currently receiving the service and to ESI IDs obtained in a future mass transition or served upon customer request; however, liabilities not excused by reason of force majeure or otherwise shall be limited to direct, actual damages.

(1) Neither the customer nor the POLR provider shall be liable to the other for consequential, incidental, punitive, exemplary, or indirect damages. These limitations apply without regard to the cause of any liability or damage.

(2) In no event shall ERCOT or a POLR provider be liable for damages to any REP, whether under tort, contract or any other theory of legal liability, for transitioning or attempting to transition a customer from such REP to the POLR provider to carry out this section, or for marketing, offering or providing competitive retail electric service to a customer taking service under this section from the POLR provider.

(p) REP obligations in a transition of customers to POLR service.

(1) A customer may initiate service with an LSP by requesting such service at the rate prescribed by subsection (m)(2) of this section with any LSP that is designated to serve the requesting customer's customer class within the requesting customer's service area. An LSP cannot refuse a customer's request to make arrangements for POLR service, except as otherwise permitted under this title.

(2) The POLR provider is responsible for obtaining resources and services needed to serve a customer once it has been notified that it is serving that customer. The customer is responsible for charges for service under this section at the rate in effect at that time.

(3) If a REP terminates service to a customer, or transitions a customer to a POLR provider, the REP is financially responsible for the resources and services used to serve the customer until it notifies the independent organization of the termination or transition of the service and the transfer to the POLR provider is complete.

(4) The POLR provider is financially responsible for all costs of providing electricity to customers from the time the transfer or initiation of service is complete until such time as the customer ceases taking service under this section.

(5) A defaulting REP whose customers are subject to a mass transition event shall return the customers' deposits within seven calendar days of the initiation of the transition.

(6) ERCOT shall create a single standard file format and a standard set of customer billing contact data elements that, in the

event of a mass transition, shall be used by the exiting REP and the POLRs to send and receive customer billing contact information. The process, as developed by ERCOT shall be tested on a periodic basis. All REPs shall submit timely, accurate, and complete files, as required by ERCOT in a mass transition event, as well as for periodic testing. The commission shall establish a procedure for the verification of customer information submitted by REPs to ERCOT. ERCOT shall notify the commission if any REP fails to comply with the reporting requirements in this subsection.

(7) When customers are to be transitioned or assigned to a POLR provider, the POLR provider may request usage and demand data, and customer contact information including email, telephone number, and address from the appropriate TDU and from ERCOT, once the transition to the POLR provider has been initiated. Customer proprietary information provided to a POLR provider in accordance with this section shall be treated as confidential and shall only be used for mass transition related purposes.

(8) Information from the TDU and ERCOT to the POLR providers shall be provided in Texas SET format when Texas SET transactions are available. However, the TDU or ERCOT may supplement the information to the POLR providers in other formats to expedite the transition. The transfer of information in accordance with this section shall not constitute a violation of the customer protection rules that address confidentiality.

(9) A POLR provider may require a deposit from a customer that has been transitioned to the POLR provider to continue to serve the customer. Despite the lack of a deposit, the POLR provider is obligated to serve the customer transitioned or assigned to it, beginning on the service initiation date of the transition or assignment, and continuing until such time as any disconnection request is effectuated by the TDU. A POLR provider may make the request for deposit before it begins serving the customer, but the POLR provider shall begin providing service to the customer even if the service initiation date is before it receives the deposit - if any deposit is required. A POLR provider shall not disconnect the customer until the appropriate time period to submit the deposit has elapsed. For the large non-residential customer class, a POLR provider may require a deposit to be provided in three calendar days. For the residential customer class, the POLR provider may require a deposit to be provided after 15 calendar days of service if the customer received 10 days' notice that a deposit was required. For all other customer classes, the POLR provider may require a deposit to be provided in 10 calendar days. The POLR provider may waive the deposit requirement at the customer's request if deposits are waived in a non-discriminatory fashion. If the POLR provider obtains sufficient data, it shall determine whether a residential customer has satisfactory credit based on the criteria the POLR provider routinely applies to its other residential customers. If the customer has satisfactory credit, the POLR provider shall not request a deposit from the residential customer.

(A) At the time of a mass transition, the Executive Director or staff designated by the Executive Director shall distribute available proceeds from an irrevocable stand-by letter of credit in accordance with the priorities established in §25.107(f)(6) of this title. These funds shall first be used to provide deposit payment assistance for transitioned customers enrolled in the rate reduction program pursuant to §25.454 of this title (relating to Rate Reduction Program). The Executive Director or staff designee shall, at the time of a transition event, determine the reasonable deposit amount up to \$400 per customer ESI ID, unless good cause exists to increase the level of the reasonable deposit amount above \$400. Such reasonable deposit amount may take into account factors such as typical residential usage and cur-

rent retail residential prices, and, if fully funded, shall satisfy in full the customers' initial deposit obligation to the VREP or LSP.

(B) The Executive Director or the staff designee shall distribute available proceeds pursuant to §25.107(f)(6) of this title to VREPs proportionate to the number of customers they received in the mass transition, who at the time of the transition are enrolled in the rate reduction program pursuant to §25.454 of this title, up to the reasonable deposit amount set by the Executive Director or staff designee. If funds remain available after distribution to the VREPs, the remaining funds shall be distributed to the appropriate LSPs by dividing the amount remaining by the number of low income customers allocated to LSPs, up to the reasonable deposit amount set by the Executive Director or staff designee.

(C) If the funds distributed in accordance with §25.107(f)(6) of this title do not equal the reasonable deposit amount determined, the VREP and LSP may request from the customer payment of the difference between the reasonable deposit amount and the amount distributed. Such difference shall be collected in accordance with §25.478(e)(3) of this title (relating to Credit Requirements and Deposits) that allows an eligible customer to pay its deposit in two equal installments provided that:

(i) The amount distributed shall be considered part of the first installment and the VREP or LSP shall not request an additional first deposit installment amount if the amount distributed is at least 50% of the reasonable deposit amount; and

(ii) A VREP or LSP may not request payment of any remaining difference between the reasonable deposit amount and the distributed deposit amount sooner than 40 days after the transition date.

(D) Notwithstanding §25.478(d) of this title, 90 days after the transition date, the VREP or LSP may request payment of an amount that results in the total deposit held being equal to what the VREP or LSP would otherwise have charged a customer in the same customer class and service area in accordance with §25.478(e) of this title, at the time of the transition.

(10) On the occurrence of one or more of the following events, ERCOT shall initiate a mass transition to POLR providers, of all of the customers served by a REP:

(A) Termination of the Load Serving Entity (LSE) or Qualified Scheduling Entity (QSE) Agreement for a REP with ERCOT;

(B) Issuance of a commission order recognizing that a REP is in default under the TDU Tariff for Retail Delivery Service;

(C) Issuance of a commission order de-certifying a REP;

(D) Issuance of a commission order requiring a mass transition to POLR providers;

(E) Issuance of a judicial order requiring a mass transition to POLR providers; and

(F) At the request of a REP, for the mass transition of all of that REP's customers.

(11) A REP shall not use the mass transition process in this section as a means to cease providing service to some customers, while retaining other customers. A REP's improper use of the mass transition process may lead to de-certification of the REP.

(12) ERCOT may provide procedures for the mass transition process, consistent with this section.

(13) A mass transition under this section shall not override or supersede a switch request made by a customer to switch an ESI ID

to a new REP of choice, if the request was made before a mass transition is initiated. If a switch request has been made but is scheduled for any date after the next available switch date, the switch shall be made on the next available switch date.

(14) Customers who are mass transitioned shall be identified for a period of 60 calendar days. The identification shall terminate at the first completed switch or at the end of the 60-day period, whichever is first. If necessary, ERCOT system changes or new transactions shall be implemented no later than 14 months from the effective date of this section to communicate that a customer was acquired in a mass transition and is not charged the out-of-cycle meter read pursuant to paragraph (16) of this subsection. To the extent possible, the systems changes should be designed to ensure that the 60-day period following a mass transition, when a customer switches away from a POLR provider, the switch transaction is processed as an unprotected, out-of-cycle switch, regardless of how the switch was submitted.

(15) In the event of a transition to a POLR provider or away from a POLR provider to a REP of choice, the switch notification notice detailed in §25.474(l) of this title (relating to Selection of Retail Electric Provider) is not required.

(16) In a mass transition event, the ERCOT initiated transactions shall request an out-of-cycle meter read for the associated ESI IDs for a date two calendar days after the calendar date ERCOT initiates such transactions to the TDU. If an ESI ID does not have the capability to be read in a fashion other than a physical meter read, the out-of-cycle meter read may be estimated. An estimated meter read for the purpose of a mass transition to a POLR provider shall not be considered a break in a series of consecutive months of estimates, but shall not be considered a month in a series of consecutive estimates performed by the TDU. A TDU shall create a regulatory asset for the TDU fees associated with a mass transition of customers to a POLR provider pursuant to this subsection. Upon review of reasonableness and necessity, a reasonable level of amortization of such regulatory asset shall be included as a recoverable cost in the TDU's rates in its next rate case or such other rate recovery proceeding as deemed necessary. The TDU shall not bill as a discretionary charge, the costs included in this regulatory asset, which shall consist of the following:

(A) fees for out-of-cycle meter reads associated with the mass transition of customers to a POLR provider; and

(B) fees for the first out-of-cycle meter read provided to a customer who transfers away from a POLR provider, when the out-of-cycle meter read is performed within 60 calendar days of the date of the mass transition and the customer is identified as a transitioned customer.

(17) In the event the TDU estimates a meter read for the purpose of a mass transition, the TDU shall perform a true-up evaluation of each ESI ID after an actual meter reading is obtained. Within 10 days after the actual meter reading is obtained, the TDU shall calculate the actual average kWh usage per day for the time period from the most previous actual meter reading occurring prior to the estimate for the purpose of a mass transition to the most current actual meter reading occurring after the estimate for the purpose of mass transition. If the average daily estimated usage sent to the exiting REP is more than 50% greater than or less than the average actual kWh usage per day, the TDU shall promptly cancel and re-bill both the exiting REP and the POLR using the average actually daily usage.

(q) Termination of POLR service provider status.

(1) The commission may revoke a REP's POLR status after notice and opportunity for hearing:

(A) If the POLR provider fails to maintain REP certification;

(B) If the POLR provider fails to provide service in a manner consistent with this section;

(C) The POLR provider fails to maintain appropriate financial qualifications; or

(D) For other good cause.

(2) If an LSP defaults or has its status revoked before the end of its term, after a review of the eligibility criteria, the commission staff designee shall, as soon as practicable, designate the next eligible REP, if any, as an LSP, based on the criteria in subsection (j) of this section.

(3) At the end of the POLR service term, the outgoing LSP shall continue to serve customers who have not selected another REP.

(r) Electric cooperative delegation of authority. An electric cooperative that has adopted customer choice may select to delegate to the commission its authority to select POLR providers under PURA §41.053(c) in its certificated service area in accordance with this section. After notice and opportunity for comment, the commission shall, at its option, accept or reject such delegation of authority. If the commission accepts the delegation of authority, the following conditions shall apply:

(1) The board of directors shall provide the commission with a copy of a board resolution authorizing such delegation of authority;

(2) The delegation of authority shall be made at least 30 calendar days prior to the time the commission issues a publication of notice of eligibility;

(3) The delegation of authority shall be for a minimum period corresponding to the period for which the solicitation shall be made;

(4) The electric cooperative wishing to delegate its authority to designate an continuous provider shall also provide the commission with the authority to apply the selection criteria and procedures described in this section in selecting the POLR providers within the electric cooperative's certificated service area; and

(5) If there are no competitive REPs offering service in the electric cooperative certificated area, the commission shall automatically reject the delegation of authority.

(s) Reporting requirements. Each LSP that serves customers under a rate prescribed by subsection (m)(2) of this section shall file the following information with the commission on a quarterly basis beginning January of each year in a project established by the commission for the receipt of such information. Each quarterly report shall be filed within 30 calendar days of the end of the quarter.

(1) For each month of the reporting quarter, each LSP shall report the total number of new customers acquired by the LSP under this section and the following information regarding these customers:

(A) The number of customers eligible for the rate reduction program pursuant to §25.454 of this title;

(B) The number of customers from whom a deposit was requested pursuant to the provisions of §25.478 of this title, and the average amount of deposit requested;

(C) The number of customers from whom a deposit was received, including those who entered into deferred payment plans for the deposit, and the average amount of the deposit;

(D) The number of customers whose service was physically disconnected pursuant to the provisions of §25.483 of this title (relating to Disconnection of Service) for failure to pay a required deposit; and

(E) Any explanatory data or narrative necessary to account for customers that were not included in either subparagraph (C) or (D) of this paragraph.

(2) For each month of the reporting quarter each LSP shall report the total number of customers to whom a disconnection notice was issued pursuant to the provisions of §25.483 of this title and the following information regarding those customers:

(A) The number of customers eligible for the rate reduction program pursuant to §25.454 of this title;

(B) The number of customers who entered into a deferred payment plan, as defined by §25.480(j) of this title (relating to Bill Payment and Adjustments) with the LSP;

(C) The number of customers whose service was physically disconnected pursuant to §25.483 of this title;

(D) The average amount owed to the LSP by each disconnected customer at the time of disconnection; and

(E) Any explanatory data or narrative necessary to account for customers that are not included in either subparagraph (B) or (C) of this paragraph.

(3) For the entirety of the reporting quarter, each LSP shall report, for each customer that received POLR service, the TDU and customer class associated with the customer's ESI ID, the number of days the customer received POLR service, and whether the customer is currently the LSP's customer.

(t) Notice of transition to POLR service to customers. When a customer is moved to POLR service, the customer shall be provided notice of the transition by ERCOT, the REP transitioning the customer, and the POLR provider. The ERCOT notice shall be provided within two days of the time ERCOT and the transitioning REP know that the customer shall be transitioned and customer contact information is available. If ERCOT cannot provide notice to customers within two days, it shall provide notice as soon as practicable. The POLR provider shall provide the notice required by paragraph (3) of this subsection to commission staff at least 48 hours before it is provided to customers, and shall provide the notice to transitioning customers as soon as practicable. The POLR provider shall email the notice to the commission staff members designated for receipt of the notice.

(1) ERCOT notice methods shall include a post-card, containing the official commission seal with language and format approved by the commission. ERCOT shall notify transitioned customers with an automated phone-call and email to the extent the information to contact the customer is available pursuant to subsection (p)(6) of this section. ERCOT shall study the effectiveness of the notice methods used and report the results to the commission.

(2) Notice by the REP from which the customer is transferred shall include:

(A) The reason for the transition;

(B) A contact number for the REP;

(C) A statement that the customer shall receive a separate notice from the POLR provider that shall disclose the date the POLR provider shall begin serving the customer;

(D) Either the customer's deposit plus accrued interest, or a statement that the deposit shall be returned within seven days of the transition;

(E) A statement that the customer can leave the assigned service by choosing a competitive product or service offered by the POLR provider, or another competitive REP, as well as the following statement: "If you would like to see offers from different retail electric providers, please access www.powertochoose.org, or call toll-free 1-866-PWR-4-TEX (1-866-797-4839) for a list of providers in your area;"

(F) For residential customers, notice from the commission in the form of a bill insert or a bill message with the header "An Important Message from the Public Utility Commission Regarding Your Electric Service" addressing why the customer has been transitioned to another REP, the continuity of service purpose, the option to choose a different competitive provider, and information on competitive markets to be found at www.powertochoose.org, or toll-free at 1-866-PWR-4-TEX (1-866-797-4839);

(G) If applicable, a description of the activities that the REP shall use to collect any outstanding payments, including the use of consumer reporting agencies, debt collection agencies, small claims court, and other remedies allowed by law, if the customer does not pay or make acceptable payment arrangements with the REP; and

(H) Notice to the customer that after being transitioned to POLR service, the customer may accelerate a switch to another REP by requesting a special or out-of-cycle meter read.

(3) Notice by the POLR provider shall include:

(A) The date the POLR provider began or shall begin serving the customer and a contact number for the POLR provider;

(B) A description of the POLR provider's rate for service. In the case of a notice from an LSP that applies the pricing of subsection (m)(2) of this section, a statement that the price is generally higher than available competitive prices, that the price is unpredictable, and that the exact rate for each billing period shall not be determined until the time the bill is prepared;

(C) The deposit requirements of the POLR provider and any applicable deposit waiver provisions and a statement that, if the customer chooses a different competitive product or service offered by the POLR provider, a REP affiliated with the POLR provider, or another competitive REP, a deposit may be required;

(D) A statement that the additional competitive products or services may be available through the POLR provider, a REP affiliated with the POLR provider, or another competitive REP, as well as the following statement: "If you would like to choose a different retail electric provider, please access www.powertochoose.org, or call toll-free 1-866-PWR-4-TEX (1-866-797-4839) for a list of providers in your area;"

(E) The applicable Terms of Service and Electricity Facts Label (EFL); and

(F) For residential customers that are served by an LSP under a rate prescribed by subsection (m)(2) of this section, a notice to the customer that after being transitioned to service from a POLR provider, the customer may accelerate a switch to another REP by requesting a special or out-of-cycle meter read.

(u) Market notice of transition to POLR service. ERCOT shall notify all affected Market Participants and the Retail Market Subcommittee (RMS) email listserv of a mass transition event within the same day of an initial mass-transition call after the call has taken place. The

notification shall include the exiting REP's name, total number of ESI IDs, and estimated load.

(v) Disconnection by a POLR provider. The POLR provider must comply with the applicable customer protection rules as provided for under Subchapter R of this chapter, except as otherwise stated in this section. To ensure continuity of service, service under this section shall begin when the customer's transition to the POLR provider is complete. A customer deposit is not a prerequisite for the initiation of service under this section. Once service has been initiated, a customer deposit may be required to prevent disconnection. Disconnection for failure to pay a deposit may not occur until after the proper notice and after that appropriate payment period detailed in §25.478 of this title has elapsed, except where otherwise noted in this section.

(w) Deposit payment assistance. Customers enrolled in the rate reduction program pursuant to §25.454 of this title shall receive POLR deposit payment assistance when proceeds are available in accordance with §25.107(f)(6) of this title.

(1) Using the most recent Low-Income Discount Administrator (LIDA) enrolled customer list, the Executive Director or staff designee shall work with ERCOT to determine the number of customer ESI IDs enrolled on the rate reduction program that shall be assigned to each VREP, and if necessary, each LSP.

(2) The commission staff designee shall distribute the deposit payment assistance monies to the appropriate POLRs on behalf of customers as soon as practicable.

(3) The Executive Director or staff designee shall use best efforts to provide written notice to the appropriate POLRs of the following on or before the second calendar day after the transition:

(A) a list of the ESI IDs enrolled on the rate reduction program that have been or shall be transitioned to the applicable POLR; and

(B) the amount of deposit payment assistance that shall be provided on behalf of a POLR customer enrolled on the rate reduction program.

(4) Amounts credited as deposit payment assistance pursuant to this section shall be refunded to the customer in accordance with §25.478(j) of this title.

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

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Public Utility Commission of Texas

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

The State Board of Education (SBOE) adopts amendments to §§74.62-74.64 and 74.72-74.74, concerning curriculum requirements. The amendments to §74.62 and §74.72 are adopted without changes to the proposed text as published in the October 18, 2013, issue of the *Texas Register* (38 TexReg 7241) and will not be republished. The amendments to §§74.63, 74.64, 74.73, and 74.74 are adopted with changes to the proposed text as published in the October 18, 2013, issue of the *Texas Register* (38 TexReg 7241). The sections establish graduation requirements for high school programs in 19 TAC Chapter 74, Subchapter F, Graduation Requirements, Beginning with School Year 2007-2008, and Subchapter G, Graduation Requirements, Beginning with School Year 2012-2013. The adopted amendments add additional courses as options to satisfy mathematics and science graduation requirements.

The 81st Texas Legislature, 2009, passed House Bill (HB) 3, amending the Texas Education Code, §28.025, to increase flexibility in graduation requirements for students. While HB 3 removed SBOE authority to designate a specific course or a specific number of credits in the enrichment curriculum as requirements for the Recommended High School Program, the SBOE retains authority in the foundation and enrichment curriculum for the Minimum High School Program and the Distinguished Achievement Program.

In January 2010, the SBOE adopted amendments to 19 TAC Chapter 74, Subchapter F, to incorporate changes to high school graduation programs in light of the graduation requirements from HB 3. The amendments were implemented beginning with the 2010-2011 school year. The amendments also allowed three career and technical education (CTE) courses to count for the fourth mathematics credit for the Recommended High School Program and two CTE courses to count for the fourth mathematics credit under the Distinguished Achievement Program. The SBOE approved changes allowing five new CTE courses to count for the fourth science credit under the Recommended High School Program and Distinguished Achievement Program. Additionally, changes were adopted allowing the Professional Communications course to satisfy the speech graduation requirement and the Principles and Elements of Floral Design course to satisfy the fine arts graduation credit.

The amendments to 19 TAC Chapter 74, Subchapter G, Graduation Requirements, Beginning with School Year 2012-2013, adopted by the SBOE in January 2012, included changes to update the graduation requirements to align with legislation passed by the 82nd Texas Legislature, 2011; allowed additional courses to satisfy certain graduation requirements; and provided additional clarification regarding requirements.

A discussion item regarding revisions to the high school graduation requirements and additional course options that might satisfy the fourth mathematics and the fourth science credit requirements under the Recommended High School Program and the Distinguished Achievement Program was presented to the Committee of the Full Board during its January 2013 meeting. At the April 2013 meeting, the SBOE approved proposed amendments to 19 TAC Chapter 74, Subchapters F and G, for first reading and filing authorization.

The proposed amendments approved by the SBOE in April 2013 included the addition of certain CTE courses along with a technology applications and a mathematics course that would sat-

isfy the fourth mathematics and fourth science graduation requirements under the Recommended High School Program and the Distinguished Achievement Program. The proposed amendments also added courses to satisfy the third mathematics graduation requirement under the Minimum High School Program.

At the July 2013 meeting, the SBOE approved for second reading and final adoption technical corrections to 19 TAC Chapter 74, Subchapters F and G, and the addition of the technology applications course Robotics Programming and Design as an option to satisfy the fourth mathematics graduation requirement under the Recommended High School Program and the Distinguished Achievement Program. The technology applications course was also added as an option to satisfy the third mathematics graduation requirement under the Minimum High School Program. The SBOE postponed final action on the approval of additional CTE courses and a mathematics course to satisfy the mathematics and science graduation requirements until a subsequent meeting.

At the September 2013 meeting, the SBOE approved for first reading and filing authorization the addition of certain CTE and mathematics courses, which had been postponed from the July 2013 meeting, as options to satisfy mathematics and science graduation requirements. Principles of Engineering and Veterinary Medical Applications were approved at first reading and filing authorization to satisfy science graduation requirements and Digital Electronics and Discrete Mathematics for Problem Solving were approved to satisfy mathematics graduation requirements. The SBOE also approved for first reading and filing authorization the addition of the technology applications course, Discrete Mathematics for Computer Science, as an option to satisfy mathematics graduation requirements.

Also at the September 2013 meeting, the SBOE approved the substitution of the repeal of §126.37, Discrete Mathematics, with first reading and filing authorization of an amendment to the course title to read "Discrete Mathematics for Computer Science" in order to distinguish the course from the Discrete Mathematics for Problem Solving course, which had been approved to be added to 19 TAC Chapter 111, Texas Essential Knowledge and Skills for Mathematics.

The SBOE took action to approve the amendments to 19 TAC Chapter 74, Subchapters F and G, for second reading and final adoption during its November 22, 2013, meeting. The SBOE also approved the amendment to §126.37 for second reading and final adoption during its November meeting.

The following changes were made to the proposed amendments to 19 TAC Chapter 74, Subchapters F and G, since the amendments were published as proposed.

Subsection (b)(3)(C) was modified in §74.63 and §74.73 and subsection (b)(3)(B) was modified in §74.64 and §74.74 to remove Veterinary Medical Applications as an option to satisfy science graduation requirements under the Recommended High School Program and the Distinguished Achievement Program, respectively.

The adopted amendments to 19 TAC Chapter 74, Subchapters F and G, have no new procedural and reporting implications. The adopted amendments have no new locally maintained paperwork requirements.

The Texas Education Agency determined that there is no direct adverse economic impact for small businesses and microbusi-

nesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Following is a summary of the public comments and corresponding responses regarding the proposed amendments to 19 TAC Chapter 74, Subchapters F and G.

Comment: The executive director of the Career and Technology Association of Texas requested that the SBOE approve Veterinary Medical Applications as a course that may satisfy the fourth science credit.

Response: The SBOE disagreed and determined that Veterinary Medical Applications was not appropriate at this time as a course that may satisfy the fourth science credit. The SBOE took action to strike proposed §§74.63(b)(3)(C)(xii), 74.64(b)(3)(B)(xii), 74.73(b)(3)(C)(xii), and 74.74(b)(3)(B)(xii).

Comment: A representative from the Texas Science Education Leadership Association stated that the SBOE should reject the proposal to allow the Veterinary Medical Applications course to satisfy a science graduation credit. The commenter stated that the course exhibited a very low level of rigor and that a great deal of the content was duplicative of content from the TEKS for other science courses.

Response: The SBOE agreed and determined that Veterinary Medical Applications was not appropriate at this time as a course that may satisfy the fourth science credit. The SBOE took action to strike proposed §§74.63(b)(3)(C)(xii), 74.64(b)(3)(B)(xii), 74.73(b)(3)(C)(xii), and 74.74(b)(3)(B)(xii).

Comment: One administrator stated that Veterinary Medical Applications should not be approved to satisfy a science credit due to the lack of scientific rigor in the course as proposed.

Response: The SBOE agreed and determined that Veterinary Medical Applications was not appropriate at this time as a course that may satisfy the fourth science credit. The SBOE took action to strike proposed §§74.63(b)(3)(C)(xii), 74.64(b)(3)(B)(xii), 74.73(b)(3)(C)(xii), and 74.74(b)(3)(B)(xii).

Comment: One community member expressed support for allowing Discrete Mathematics in Computer Science to satisfy a fourth mathematics credit.

Response: The SBOE agreed and determined that the course was appropriately included as an option to satisfy a fourth mathematics credit on the Recommended High School Program and the Distinguished Achievement Program.

Comment: A representative from the Texas Science Education Leadership Association stated that the SBOE should not allow the Principles of Engineering course to satisfy a science graduation requirement.

Response: The SBOE disagreed and determined that Principles of Engineering was appropriately included as an option to satisfy a fourth science credit on the Recommended High School Program and the Distinguished Achievement Program.

Comment: A representative of the Science Teachers Association of Texas expressed concern for some of the CTE courses that were proposed to satisfy a mathematics or science credit.

Response: The SBOE agreed and determined that one CTE course proposed to satisfy a science graduation credit was not appropriate at this time to satisfy a fourth science credit requirement. In response to this and other comments, the SBOE took action to strike Veterinary Medical Applications as an option to satisfy a science graduation requirement. The SBOE disagreed

regarding the CTE courses Digital Electronics and Principles of Engineering and determined that both courses were appropriately included as options to satisfy a fourth mathematics credit and a fourth science credit respectively.

SUBCHAPTER F. GRADUATION REQUIREMENTS, BEGINNING WITH SCHOOL YEAR 2007-2008

19 TAC §§74.62 - 74.64

The amendments are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; §28.00222, as added by House Bill 5 and House Bill 2201, 83rd Texas Legislature, Regular Session, 2013, which requires the SBOE to ensure that certain courses are approved to satisfy a fourth credit in mathematics; and §28.025, as that section existed before amendment by House Bill 5, which authorizes the SBOE to determine by rule curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002.

The amendments implement the Texas Education Code, §§7.102(c)(4); 28.002; 28.00222, as added by House Bill 5 and House Bill 2201, 83rd Texas Legislature, Regular Session, 2013; and 28.025, as that section existed before amendment by House Bill 5.

§74.63. *Recommended High School Program.*

(a) Credits. A student must earn at least 26 credits to complete the Recommended High School Program.

(b) Core Courses. A student must demonstrate proficiency in the following:

(1) English language arts--four credits. The credits must consist of English I, II, III, and IV (Students with limited English proficiency who are at the beginning or intermediate level of English language proficiency, as defined by §74.4(d) of this title (relating to English Language Proficiency Standards), may satisfy the English I and English II graduation requirements by successfully completing English I for Speakers of Other Languages and English II for Speakers of Other Languages).

(2) Mathematics--four credits. Three of the credits must consist of Algebra I, Algebra II, and Geometry.

(A) The additional credit may be Mathematical Models with Applications and must be successfully completed prior to Algebra II.

(B) The fourth credit may be selected from the following courses after successful completion of Algebra I, Geometry, and Algebra II:

- (i) Precalculus;
- (ii) Independent Study in Mathematics;
- (iii) Advanced Placement (AP) Statistics;
- (iv) AP Calculus AB;
- (v) AP Calculus BC;
- (vi) AP Computer Science;

(vii) International Baccalaureate (IB) Mathematical Studies Standard Level;

(viii) IB Mathematics Standard Level;

(ix) IB Mathematics Higher Level;

(x) IB Further Mathematics Standard Level;

(xi) Robotics Programming and Design;

(xii) Discrete Mathematics for Problem Solving;

(xiii) Discrete Mathematics for Computer Science;

and

(xiv) pursuant to the Texas Education Code (TEC), §28.025(b-5), a mathematics course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The Texas Education Agency shall maintain a current list of courses approved under this clause.

(C) The additional credit may be selected from the following courses and may be taken after the successful completion of Algebra I and Geometry and either after the successful completion of or concurrently with Algebra II:

(i) Engineering Mathematics;

(ii) Mathematical Applications in Agriculture, Food, and Natural Resources;

(iii) Statistics and Risk Management; and

(iv) Digital Electronics.

(3) Science--four credits. Three of the credits must consist of a biology credit (Biology, AP Biology, or IB Biology), a chemistry credit (Chemistry, AP Chemistry, or IB Chemistry), and a physics credit (Physics, Principles of Technology, AP Physics, or IB Physics).

(A) The additional credit may be Integrated Physics and Chemistry (IPC) and must be successfully completed prior to chemistry and physics.

(B) The fourth credit may be selected from the following laboratory-based courses:

(i) Aquatic Science;

(ii) Astronomy;

(iii) Earth and Space Science;

(iv) Environmental Systems;

(v) AP Biology;

(vi) AP Chemistry;

(vii) AP Physics B;

(viii) AP Physics C;

(ix) AP Environmental Science;

(x) IB Biology;

(xi) IB Chemistry;

(xii) IB Physics;

(xiii) IB Environmental Systems; and

(xiv) pursuant to the TEC, §28.025(b-5), a science course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The Texas

Education Agency shall maintain a current list of courses approved under this clause.

(C) The additional credit may be selected from the following laboratory-based courses and may be taken after the successful completion of biology and chemistry and either after the successful completion of or concurrently with physics:

- (i) Scientific Research and Design;
- (ii) Anatomy and Physiology;
- (iii) Engineering Design and Problem Solving;
- (iv) Medical Microbiology;
- (v) Pathophysiology;
- (vi) Advanced Animal Science;
- (vii) Advanced Biotechnology;
- (viii) Advanced Plant and Soil Science;
- (ix) Food Science;
- (x) Forensic Science; and
- (xi) Principles of Engineering.

(4) Social studies--three and one-half credits. The credits must consist of World History Studies (one credit), World Geography Studies (one credit), United States History Studies Since Reconstruction (one credit), and United States Government (one-half credit).

(5) Economics, with emphasis on the free enterprise system and its benefits--one-half credit. The credit must consist of Economics with Emphasis on the Free Enterprise System and Its Benefits.

(6) Languages other than English--two credits. The credits must consist of any two levels in the same language.

(7) Physical education--one credit.

(A) The required credit may be from any combination of the following one-half to one credit courses:

- (i) Foundations of Personal Fitness;
- (ii) Adventure/Outdoor Education;
- (iii) Aerobic Activities; and
- (iv) Team or Individual Sports.

(B) In accordance with local district policy, credit for any of the courses listed in subparagraph (A) of this paragraph may be earned through participation in the following activities:

- (i) Athletics;
- (ii) Junior Reserve Officer Training Corps (JROTC); and
- (iii) appropriate private or commercially-sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in physical education. Such approval may be granted under the following conditions.

(I) Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating

at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

(II) Private or commercially-sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

(C) In accordance with local district policy, up to one credit for any one of the courses listed in subparagraph (A) of this paragraph may be earned through participation in any of the following activities:

- (i) Drill Team;
- (ii) Marching Band; and
- (iii) Cheerleading.

(D) All substitution activities allowed in subparagraphs (B) and (C) of this paragraph must include at least 100 minutes per five-day school week of moderate to vigorous physical activity.

(E) Credit may not be earned for any course identified in subparagraph (A) of this paragraph more than once. No more than four substitution credits may be earned through any combination of substitutions allowed in subparagraphs (B) and (C) of this paragraph.

(F) If a student is unable to comply with all of the requirements for a physical education course due to a physical limitation certified by a licensed medical practitioner, a modification to a physical education course does not prohibit the student from earning a Recommended High School Program diploma. A student with a physical limitation must still demonstrate proficiency in the relevant knowledge and skills in a physical education course that do not require physical activity.

(8) Speech--one-half credit. The credit may be selected from the following courses:

- (A) Communication Applications; and
- (B) Professional Communications.

(9) Fine arts--one credit. The credit may be selected from the following courses:

- (A) Art, Level I, II, III, or IV;
- (B) Dance, Level I, II, III, or IV;
- (C) Music, Level I, II, III, or IV;
- (D) Theatre, Level I, II, III, or IV; and
- (E) Principles and Elements of Floral Design.

(c) Elective Courses--five and one-half credits. The credits may be selected from the list of courses specified in §74.61(j) of this title (relating to High School Graduation Requirements). All students who wish to complete the Recommended High School Program are encouraged to study each of the four foundation curriculum areas (English language arts, mathematics, science, and social studies) every year in high school.

(d) Substitutions. No substitutions are allowed in the Recommended High School Program, except as specified in this chapter.

§74.64. *Distinguished Achievement High School Program--Advanced High School Program.*

(a) Credits. A student must earn at least 26 credits to complete the Distinguished Achievement High School Program.

(b) Core Courses. A student must demonstrate proficiency in the following:

(1) English language arts--four credits. The credits must consist of English I, II, III, and IV (Students with limited English proficiency who are at the beginning or intermediate level of English language proficiency, as defined by §74.4(d) of this title (relating to English Language Proficiency Standards), may satisfy the English I and English II graduation requirements by successfully completing English I for Speakers of Other Languages and English II for Speakers of Other Languages).

(2) Mathematics--four credits. Three of the credits must consist of Algebra I, Algebra II, and Geometry.

(A) The fourth credit may be selected from the following courses after successful completion of Algebra I, Algebra II, and Geometry:

- (i) Precalculus;
- (ii) Independent Study in Mathematics;
- (iii) Advanced Placement (AP) Statistics;
- (iv) AP Calculus AB;
- (v) AP Calculus BC;
- (vi) AP Computer Science;
- (vii) International Baccalaureate (IB) Mathematical Studies Standard Level;
- (viii) IB Mathematics Standard Level;
- (ix) IB Mathematics Higher Level;
- (x) IB Further Mathematics Standard Level;
- (xi) Robotics Programming and Design;
- (xii) Discrete Mathematics for Problem Solving;
- (xiii) Discrete Mathematics for Computer Science;

and

(xiv) pursuant to the Texas Education Code (TEC), §28.025(b-5), a mathematics course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The Texas Education Agency (TEA) shall maintain a current list of courses approved under this clause.

(B) The additional credit may be selected from the following courses and may be taken after the successful completion of Algebra I and Geometry and either after the successful completion of or concurrently with Algebra II:

- (i) Engineering Mathematics;
- (ii) Statistics and Risk Management; and
- (iii) Digital Electronics.

(3) Science--four credits. Three of the credits must consist of a biology credit (Biology, AP Biology, or IB Biology), a chemistry credit (Chemistry, AP Chemistry, or IB Chemistry), and a physics credit (Physics, AP Physics, or IB Physics).

(A) The fourth credit may be selected from the following laboratory-based courses:

- (i) Aquatic Science;
- (ii) Astronomy;

- (iii) Earth and Space Science;
- (iv) Environmental Systems;
- (v) AP Biology;
- (vi) AP Chemistry;
- (vii) AP Physics B;
- (viii) AP Physics C;
- (ix) AP Environmental Science;
- (x) IB Biology;
- (xi) IB Chemistry;
- (xii) IB Physics;
- (xiii) IB Environmental Systems; and

(xiv) pursuant to the TEC, §28.025(b-5), a science course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The TEA shall maintain a current list of courses approved under this clause.

(B) The additional credit may be selected from the following laboratory-based courses and may be taken after the successful completion of biology and chemistry and either after the successful completion of or concurrently with physics:

- (i) Scientific Research and Design;
- (ii) Anatomy and Physiology;
- (iii) Engineering Design and Problem Solving;
- (iv) Medical Microbiology;
- (v) Pathophysiology;
- (vi) Advanced Animal Science;
- (vii) Advanced Biotechnology;
- (viii) Advanced Plant and Soil Science;
- (ix) Food Science;
- (x) Forensic Science; and
- (xi) Principles of Engineering.

(4) Social studies--three and one-half credits. The credits must consist of World History Studies (one credit), World Geography Studies (one credit), United States History Studies Since Reconstruction (one credit), and United States Government (one-half credit).

(5) Economics, with emphasis on the free enterprise system and its benefits--one-half credit. The credit must consist of Economics with Emphasis on the Free Enterprise System and Its Benefits.

(6) Languages other than English--three credits. The credits must consist of any three levels in the same language.

(7) Physical education--one credit.

(A) The required credit may be from any combination of the following one-half to one credit courses:

- (i) Foundations of Personal Fitness;
- (ii) Adventure/Outdoor Education;
- (iii) Aerobic Activities; and
- (iv) Team or Individual Sports.

(B) In accordance with local district policy, credit for any of the courses listed in subparagraph (A) of this paragraph may be earned through participation in the following activities:

- (i) Athletics;
- (ii) Junior Reserve Officer Training Corps (JROTC); and

(iii) appropriate private or commercially-sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in physical education. Such approval may be granted under the following conditions.

(I) Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

(II) Private or commercially-sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

(C) In accordance with local district policy, up to one credit for any one of the courses listed in subparagraph (A) of this paragraph may be earned through participation in any of the following activities:

- (i) Drill Team;
- (ii) Marching Band; and
- (iii) Cheerleading.

(D) All substitution activities allowed in subparagraphs (B) and (C) of this paragraph must include at least 100 minutes per five-day school week of moderate to vigorous physical activity.

(E) Credit may not be earned for any course identified in subparagraph (A) of this paragraph more than once. No more than four substitution credits may be earned through any combination of substitutions allowed in subparagraphs (B) and (C) of this paragraph.

(F) If a student is unable to comply with all of the requirements for a physical education course due to a physical limitation certified by a licensed medical practitioner, a modification to a physical education course does not prohibit the student from earning a Distinguished Achievement Program diploma. A student with a physical limitation must still demonstrate proficiency in the relevant knowledge and skills in a physical education course that do not require physical activity.

(8) Speech--one-half credit. The credit may be selected from the following courses:

- (A) Communication Applications; and
- (B) Professional Communications.

(9) Fine arts--one credit. The credit may be selected from the following courses:

- (A) Art, Level I, II, III, or IV;

- (B) Dance, Level I, II, III, or IV;
- (C) Music, Level I, II, III, or IV;
- (D) Theatre, Level I, II, III, or IV; and
- (E) Principles and Elements of Floral Design.

(c) Elective Courses--four and one-half credits. The credits may be selected from the list of courses specified in §74.61(j) of this title (relating to High School Graduation Requirements). All students who wish to complete the Distinguished Achievement High School Program are encouraged to study each of the four foundation curriculum areas (English language arts, mathematics, science, and social studies) every year in high school.

(d) Advanced measures. A student also must achieve any combination of four of the following advanced measures. Original research/projects may not be used for more than two of the four advanced measures. The measures must focus on demonstrated student performance at the college or professional level. Student performance on advanced measures must be assessed through an external review process. The student may choose from the following options:

(1) original research/project that is:

- (A) judged by a panel of professionals in the field that is the focus of the project; or
- (B) conducted under the direction of mentor(s) and reported to an appropriate audience; and
- (C) related to the required curriculum set forth in §74.1 of this title (relating to Essential Knowledge and Skills);

(2) test data where a student receives:

- (A) a score of three or above on the College Board advanced placement examination;
- (B) a score of four or above on an International Baccalaureate examination; or

(C) a score on the Preliminary SAT/National Merit Scholarship Qualifying Test (PSAT/NMSQT) that qualifies the student for recognition as a commended scholar or higher by the College Board and National Merit Scholarship Corporation, as part of the National Hispanic Recognition Program (NHRP) of the College Board or as part of the National Achievement Scholarship Program of the National Merit Scholarship Corporation. The PSAT/NMSQT score shall count as only one advanced measure regardless of the number of honors received by the student; or

(3) college academic courses, including those taken for dual credit, and advanced technical credit courses, including locally articulated courses, with a grade of 3.0 or higher.

(e) Substitutions. No substitutions are allowed in the Distinguished Achievement High School Program, except as specified in this chapter.

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

Filed with the Office of the Secretary of State on January 21, 2014.

TRD-201400197



SUBCHAPTER G. GRADUATION REQUIREMENTS, BEGINNING WITH SCHOOL YEAR 2012-2013

19 TAC §§74.72 - 74.74

The amendments are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; §28.00222, as added by House Bill 5 and House Bill 2201, 83rd Texas Legislature, Regular Session, 2013, which requires the SBOE to ensure that certain courses are approved to satisfy a fourth credit in mathematics; and §28.025, as that section existed before amendment by House Bill 5, which authorizes the SBOE to determine by rule curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002.

The amendments implement the Texas Education Code, §§7.102(c)(4); 28.002; 28.00222, as added by House Bill 5 and House Bill 2201, 83rd Texas Legislature, Regular Session, 2013; and 28.025, as that section existed before amendment by House Bill 5.

§74.73. *Recommended High School Program.*

(a) Credits. A student must earn at least 26 credits to complete the Recommended High School Program.

(b) Core courses. A student must demonstrate proficiency in the following:

(1) English language arts--four credits. The credits must consist of English I, II, III, and IV. (Students with limited English proficiency who are at the beginning or intermediate level of English language proficiency, as defined by §74.4(d) of this title (relating to English Language Proficiency Standards), may satisfy the English I and English II graduation requirements by successfully completing English I for Speakers of Other Languages and English II for Speakers of Other Languages.)

(2) Mathematics--four credits. Three of the credits must consist of Algebra I, Algebra II, and Geometry.

(A) The additional credit may be Mathematical Models with Applications and must be successfully completed prior to Algebra II.

(B) The fourth credit may be selected from the following courses:

- (i) Precalculus;
- (ii) Independent Study in Mathematics;
- (iii) Advanced Quantitative Reasoning;
- (iv) Advanced Placement (AP) Statistics;

- (v) AP Calculus AB;
- (vi) AP Calculus BC;
- (vii) AP Computer Science;
- (viii) International Baccalaureate (IB) Mathematical Studies Standard Level;
- (ix) IB Mathematics Standard Level;
- (x) IB Mathematics Higher Level;
- (xi) IB Further Mathematics Standard Level;
- (xii) Robotics Programming and Design;
- (xiii) Discrete Mathematics for Problem Solving;
- (xiv) Discrete Mathematics for Computer Science;

and

(xv) pursuant to the Texas Education Code (TEC), §28.025(b-5), a mathematics course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The Texas Education Agency (TEA) shall maintain a current list of courses approved under this clause.

(C) The additional credit may be selected from the following courses and may be taken after the successful completion of Algebra I and Geometry and either after the successful completion of or concurrently with Algebra II:

- (i) Engineering Mathematics;
- (ii) Mathematical Applications in Agriculture, Food, and Natural Resources;
- (iii) Statistics and Risk Management; and
- (iv) Digital Electronics.

(3) Science--four credits. Three of the credits must consist of a biology credit (Biology, AP Biology, or IB Biology), a chemistry credit (Chemistry, AP Chemistry, or IB Chemistry), and a physics credit (Physics, Principles of Technology, AP Physics, or IB Physics).

(A) The additional credit may be Integrated Physics and Chemistry (IPC) and must be successfully completed prior to chemistry and physics.

(B) The fourth credit may be selected from the following laboratory-based courses:

- (i) Aquatic Science;
- (ii) Astronomy;
- (iii) Earth and Space Science;
- (iv) Environmental Systems;
- (v) AP Biology;
- (vi) AP Chemistry;
- (vii) AP Physics B;
- (viii) AP Physics C;
- (ix) AP Environmental Science;
- (x) IB Biology;
- (xi) IB Chemistry;
- (xii) IB Physics;
- (xiii) IB Environmental Systems; and

(xiv) pursuant to the TEC, §28.025(b-5), a science course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The TEA shall maintain a current list of courses approved under this clause.

(C) The additional credit may be selected from the following laboratory-based courses and may be taken after the successful completion of biology and chemistry and either after the successful completion of or concurrently with physics:

- (i) Scientific Research and Design;
- (ii) Anatomy and Physiology;
- (iii) Engineering Design and Problem Solving;
- (iv) Medical Microbiology;
- (v) Pathophysiology;
- (vi) Advanced Animal Science;
- (vii) Advanced Biotechnology;
- (viii) Advanced Plant and Soil Science;
- (ix) Food Science;
- (x) Forensic Science; and
- (xi) Principles of Engineering.

(4) Social studies--four credits. The credits must consist of World History Studies (one credit), World Geography Studies (one credit), United States History Studies Since 1877 (one credit), United States Government (one-half credit), and Economics with Emphasis on the Free Enterprise System and Its Benefits (one-half credit).

(5) Languages other than English--two credits. The credits must consist of any two levels in the same language.

(6) Physical education--one credit.

(A) The required credit may be selected from any combination of the following one-half to one credit courses:

- (i) Foundations of Personal Fitness;
- (ii) Adventure/Outdoor Education;
- (iii) Aerobic Activities; and
- (iv) Team or Individual Sports.

(B) In accordance with local district policy, credit for any of the courses listed in subparagraph (A) of this paragraph may be earned through participation in the following activities:

- (i) Athletics;
- (ii) Junior Reserve Officer Training Corps (JROTC); and

(iii) appropriate private or commercially sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in physical education. Such approval may be granted under the following conditions.

(I) Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating

at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

(II) Private or commercially sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

(C) In accordance with local district policy, up to one credit for any one of the courses listed in subparagraph (A) of this paragraph may be earned through participation in any of the following activities:

- (i) Drill Team;
- (ii) Marching Band; and
- (iii) Cheerleading.

(D) All substitution activities allowed in subparagraphs (B) and (C) of this paragraph must include at least 100 minutes per five-day school week of moderate to vigorous physical activity.

(E) Credit may not be earned for any course identified in subparagraph (A) of this paragraph more than once. No more than four substitution credits may be earned through any combination of substitutions allowed in subparagraphs (B) and (C) of this paragraph.

(F) If a student is unable to comply with all of the requirements for a physical education course due to a physical limitation certified by a licensed medical practitioner, a modification to a physical education course does not prohibit the student from earning a Recommended High School Program diploma. A student with a physical limitation must still demonstrate proficiency in the relevant knowledge and skills in a physical education course that do not require physical activity.

(G) A student who is unable to participate in physical activity due to disability or illness may substitute an academic elective credit (English language arts, mathematics, science, or social studies) for the physical education credit requirement. The determination regarding a student's ability to participate in physical activity will be made by:

(i) the student's admission, review, and dismissal (ARD) committee if the student receives special education services under the Texas Education Code, Chapter 29, Subchapter A;

(ii) the committee established for the student under Section 504, Rehabilitation Act of 1973 (29 United States Code, §794) if the student does not receive special education services under the TEC, Chapter 29, Subchapter A, but is covered by the Rehabilitation Act of 1973; or

(iii) a committee established by the school district of persons with appropriate knowledge regarding the student if each of the committees described by clauses (i) and (ii) of this subparagraph is inapplicable. This committee shall follow the same procedures required of an ARD or a Section 504 committee.

(7) Speech--one-half credit. The credit may be selected from the following courses:

- (A) Communication Applications; and
- (B) Professional Communications.

(8) Fine arts--one credit. The credit may be selected from the following courses:

- (A) Art, Level I, II, III, or IV;

- (B) Dance, Level I, II, III, or IV;
- (C) Music, Level I, II, III, or IV;
- (D) Theatre, Level I, II, III, or IV;
- (E) Principles and Elements of Floral Design;
- (F) Digital Art and Animation; and
- (G) 3-D Modeling and Animation.

(c) Elective courses--five and one-half credits. The credits may be selected from the list of courses specified in §74.71(h) of this title (relating to High School Graduation Requirements). All students who wish to complete the Recommended High School Program are encouraged to study each of the four foundation curriculum areas (English language arts, mathematics, science, and social studies) every year in high school. A student may not combine a half credit of a course for which there is an end-of-course assessment with another elective credit course to satisfy an elective credit requirement.

(d) Substitutions. No substitutions are allowed in the Recommended High School Program, except as specified in this chapter.

§74.74. *Distinguished Achievement High School Program--Advanced High School Program.*

(a) Credits. A student must earn at least 26 credits to complete the Distinguished Achievement High School Program.

(b) Core courses. A student must demonstrate proficiency in the following:

(1) English language arts--four credits. The credits must consist of English I, II, III, and IV. (Students with limited English proficiency who are at the beginning or intermediate level of English language proficiency, as defined by §74.4(d) of this title (relating to English Language Proficiency Standards), may satisfy the English I and English II graduation requirements by successfully completing English I for Speakers of Other Languages and English II for Speakers of Other Languages.)

(2) Mathematics--four credits. Three of the credits must consist of Algebra I, Algebra II, and Geometry.

(A) The fourth credit may be selected from the following courses after successful completion of Algebra I, Algebra II, and Geometry:

- (i) Precalculus;
- (ii) Independent Study in Mathematics;
- (iii) Advanced Quantitative Reasoning;
- (iv) Advanced Placement (AP) Statistics;
- (v) AP Calculus AB;
- (vi) AP Calculus BC;
- (vii) AP Computer Science;
- (viii) International Baccalaureate (IB) Mathematical Studies Standard Level;
- (ix) IB Mathematics Standard Level;
- (x) IB Mathematics Higher Level;
- (xi) IB Further Mathematics Standard Level;
- (xii) Robotics Programming and Design;
- (xiii) Discrete Mathematics for Problem Solving;

(xiv) Discrete Mathematics for Computer Science; and

(xv) pursuant to the Texas Education Code (TEC), §28.025(b-5), a mathematics course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The Texas Education Agency (TEA) shall maintain a current list of courses approved under this clause.

(B) The additional credit may be selected from the following courses and may be taken after the successful completion of Algebra I and Geometry and either after the successful completion of or concurrently with Algebra II:

- (i) Engineering Mathematics;
- (ii) Statistics and Risk Management; and
- (iii) Digital Electronics.

(3) Science--four credits. Three of the credits must consist of a biology credit (Biology, AP Biology, or IB Biology), a chemistry credit (Chemistry, AP Chemistry, or IB Chemistry), and a physics credit (Physics, AP Physics, or IB Physics).

(A) The fourth credit may be selected from the following laboratory-based courses:

- (i) Aquatic Science;
- (ii) Astronomy;
- (iii) Earth and Space Science;
- (iv) Environmental Systems;
- (v) AP Biology;
- (vi) AP Chemistry;
- (vii) AP Physics B;
- (viii) AP Physics C;
- (ix) AP Environmental Science;
- (x) IB Biology;
- (xi) IB Chemistry;
- (xii) IB Physics;
- (xiii) IB Environmental Systems; and

(xiv) pursuant to the TEC, §28.025(b-5), a science course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The TEA shall maintain a current list of courses approved under this clause.

(B) The additional credit may be selected from the following laboratory-based courses and may be taken after the successful completion of biology and chemistry and either after the successful completion of or concurrently with physics:

- (i) Scientific Research and Design;
- (ii) Anatomy and Physiology;
- (iii) Engineering Design and Problem Solving;
- (iv) Medical Microbiology;
- (v) Pathophysiology;
- (vi) Advanced Animal Science;
- (vii) Advanced Biotechnology;

- (viii) Advanced Plant and Soil Science;
- (ix) Food Science;
- (x) Forensic Science; and
- (xi) Principles of Engineering.

(4) Social studies--four credits. The credits must consist of World History Studies (one credit), World Geography Studies (one credit), United States History Studies Since 1877 (one credit), United States Government (one-half credit), and Economics with Emphasis on the Free Enterprise System and Its Benefits (one-half credit).

(5) Languages other than English--three credits. The credits must consist of any three levels in the same language.

(6) Physical education--one credit.

(A) The required credit may be selected from any combination of the following one-half to one credit courses:

- (i) Foundations of Personal Fitness;
- (ii) Adventure/Outdoor Education;
- (iii) Aerobic Activities; and
- (iv) Team or Individual Sports.

(B) In accordance with local district policy, credit for any of the courses listed in subparagraph (A) of this paragraph may be earned through participation in the following activities:

- (i) Athletics;
- (ii) Junior Reserve Officer Training Corps (JROTC); and
- (iii) appropriate private or commercially sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in physical education. Such approval may be granted under the following conditions.

(I) Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

(II) Private or commercially sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

(C) In accordance with local district policy, up to one credit for any one of the courses listed in subparagraph (A) of this paragraph may be earned through participation in any of the following activities:

- (i) Drill Team;
- (ii) Marching Band; and
- (iii) Cheerleading.

(D) All substitution activities allowed in subparagraphs (B) and (C) of this paragraph must include at least 100 minutes per five-day school week of moderate to vigorous physical activity.

(E) Credit may not be earned for any course identified in subparagraph (A) of this paragraph more than once. No more than four substitution credits may be earned through any combination of substitutions allowed in subparagraphs (B) and (C) of this paragraph.

(F) If a student is unable to comply with all of the requirements for a physical education course due to a physical limitation certified by a licensed medical practitioner, a modification to a physical education course does not prohibit the student from earning a Distinguished Achievement Program diploma. A student with a physical limitation must still demonstrate proficiency in the relevant knowledge and skills in a physical education course that do not require physical activity.

(G) A student who is unable to participate in physical activity due to disability or illness may substitute an academic elective credit (English language arts, mathematics, science, or social studies) for the physical education credit requirement. The determination regarding a student's ability to participate in physical activity will be made by:

(i) the student's admission, review, and dismissal (ARD) committee if the student receives special education services under the Texas Education Code (TEC), Chapter 29, Subchapter A;

(ii) the committee established for the student under Section 504, Rehabilitation Act of 1973 (29 United States Code, §794) if the student does not receive special education services under the TEC, Chapter 29, Subchapter A, but is covered by the Rehabilitation Act of 1973; or

(iii) a committee established by the school district of persons with appropriate knowledge regarding the student if each of the committees described by clauses (i) and (ii) of this subparagraph is inapplicable. This committee shall follow the same procedures required of an ARD or a Section 504 committee.

(7) Speech--one-half credit. The credit may be selected from the following courses:

- (A) Communication Applications; and
- (B) Professional Communications.

(8) Fine arts--one credit. The credit may be selected from the following courses:

- (A) Art, Level I, II, III, or IV;
- (B) Dance, Level I, II, III, or IV;
- (C) Music, Level I, II, III, or IV;
- (D) Theatre, Level I, II, III, or IV;
- (E) Principles and Elements of Floral Design;
- (F) Digital Art and Animation; and
- (G) 3-D Modeling and Animation.

(c) Elective courses--four and one-half credits. The credits may be selected from the list of courses specified in §74.71(h) of this title (relating to High School Graduation Requirements). All students who wish to complete the Distinguished Achievement High School Program are encouraged to study each of the four foundation curriculum areas (English language arts, mathematics, science, and social studies) every year in high school. A student may not combine a half credit of a course for which there is an end-of-course assessment with another elective credit course to satisfy an elective credit requirement.

(d) Advanced measures. A student also must achieve any combination of four of the following advanced measures. Original

research/projects may not be used for more than two of the four advanced measures. The measures must focus on demonstrated student performance at the college or professional level. Student performance on advanced measures must be assessed through an external review process. The student may choose from the following options:

(1) original research/project that is:

(A) judged by a panel of professionals in the field that is the focus of the project; or

(B) conducted under the direction of mentor(s) and reported to an appropriate audience; and

(C) related to the required curriculum set forth in §74.1 of this title (relating to Essential Knowledge and Skills);

(2) test data showing a student has earned:

(A) a score of three or above on the College Board advanced placement examination;

(B) a score of four or above on an International Baccalaureate examination; or

(C) a score on the Preliminary SAT/National Merit Scholarship Qualifying Test (PSAT/NMSQT) that qualifies the student for recognition as a commended scholar or higher by the College Board and National Merit Scholarship Corporation, as part of the National Hispanic Recognition Program (NHRP) of the College Board or as part of the National Achievement Scholarship Program of the National Merit Scholarship Corporation. The PSAT/NMSQT score shall count as only one advanced measure regardless of the number of honors received by the student; or

(3) college academic courses, including those taken for dual credit, and advanced technical credit courses, including locally articulated courses, with a grade of 3.0 or higher.

(e) Substitutions. No substitutions are allowed in the Distinguished Achievement High School Program, except as specified in this chapter.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.1

The Texas Board of Physical Therapy Examiners adopts amendments to §329.1, concerning General Licensure Requirements and Procedures, without changes to the proposed text as published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7049).

The amendments identify licensee contact information and establish a faster licensure process for military personnel and veterans.

The amendments reflect changes to the law regarding contact information that licensees must submit to the Board along with address of record designation, and also the addition of information regarding the acceptance of pertinent military service, training or education toward the licensure of military personnel or veterans.

No comments were received regarding the proposed amendments.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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

Filed with the Office of the Secretary of State on January 22, 2014.

TRD-201400202

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

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Proposal publication date: October 11, 2013

For further information, please call: (512) 305-6900



22 TAC §329.6

The Texas Board of Physical Therapy Examiners adopts amendments to §329.6, concerning Licensure by Endorsement, without changes to the proposed text as published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7050).

The amendments reflect changes to the law regarding the licensure by endorsement of the spouse of a member of the U.S. Armed Forces on active duty and establish that the issuance of that license will be expedited. The amendments also clarify that the score reported as part of the application must have been accepted as a passing score by a state, District of Columbia, or territory of the U.S. at the time the applicant took the exam.

The amendments will assist spouses of military service people on active duty in getting a Texas license more quickly.

No comments were received regarding the proposed amendments.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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

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John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

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For further information, please call: (512) 305-6900



CHAPTER 337. DISPLAY OF LICENSE

22 TAC §337.1

The Texas Board of Physical Therapy Examiners adopts amendments to §337.1, concerning Display of License, without changes to the proposed text as published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7051).

The amendments reflect changes to the law during the last session by deleting the requirement that licensees display a renewal certificate with the original license and changing the title of the rule.

The amendments will result in more efficient operations by the agency and more reliable information about licensure status since it will have to be obtained from the board's website instead of an easily altered paper document.

No comments were received regarding the proposed amendments.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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

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John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

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For further information, please call: (512) 305-6900



CHAPTER 341. LICENSE RENEWAL

22 TAC §341.1

The Texas Board of Physical Therapy Examiners adopts amendments to §341.1, concerning Requirements for Renewal, without

changes to the proposed text as published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7052).

The amendments reflect changes to the laws regarding license renewal and reinstatement made during the last legislative session. Other language has been changed and reordered for greater clarity.

The amendments will allow more PTs and PTAs whose licenses have expired to return to the workforce.

No comments were received regarding the proposed amendments.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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

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John P. Maline

Executive Director

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For further information, please call: (512) 305-6900



22 TAC §341.2

The Texas Board of Physical Therapy Examiners adopts amendments to §341.2, concerning Continuing Competence Requirements, without changes to the proposed text as published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7053).

The amendments reflect changes to the laws regarding license renewal and reinstatement made during the last legislative session. Other language has been changed and reordered for greater clarity.

The amendments move information about the requirement for a course covering ethics and professional responsibility and the requirement for approval by the board-approved organization to this section from §341.3, concerning Qualifying Continuing Competence Activities, and update the definition of continuing competence. They also modify and add to the information that activity sponsors/providers should use in publicity and on certificates of completion regarding approval by the board.

No comments were received regarding the proposed amendments.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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

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John P. Maline

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22 TAC §341.3

The Texas Board of Physical Therapy Examiners adopts amendments to §341.3, concerning Qualifying Continuing Competence Activities, with changes to the proposed text as published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7054).

The amendments update the list of activities that are considered to enhance continuing competence for licensees. The nonsubstantive changes fixed inconsistencies in language (for example, deleted or added articles preceding words); and deleted duplicate paragraphs.

The amendments revise the list of activities that qualify for credit and move information regarding the ethics/professional responsibility requirement and the activity approval process to another section of the chapter.

Comments were received from several individuals, all in favor of the amendments.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

§341.3. *Qualifying Continuing Competence Activities.*

Licensees may select from a variety of activities to fulfill the requirements for continuing competence. These activities include the following:

(1) Continuing education (CE).

(A) Program content and structure must be approved by the board-approved organization, or be offered by a provider accredited by that organization. Programs must meet the following criteria:

(i) Program content must be easily recognizable as pertinent to the physical therapy profession and in the areas of ethics, professional responsibility, clinical application, clinical management, behavioral science, science, or risk management.

(ii) The content must be identified by instructional level, i.e., basic, intermediate, advanced. Program objectives must be clearly written to identify the knowledge and skills the participants should acquire and be consistent with the stated instructional level.

(iii) The instructional methods related to the objectives must be identified and be consistent with the stated objectives.

(iv) Programs must be presented by a licensed health care provider, or by a person with appropriate credentials and/or specialized training in the field.

(v) Program providers are prohibited from self-promotion of programs, products, and/or services during the presentation of the program.

(vi) The participants must evaluate the program. A summary of these evaluations must be made available to the board-approved organization upon request.

(vii) Records of each licensee who participates in the program must be maintained for four years by the CE sponsor/provider and must be made available to the board-approved organization upon request.

(B) CE programs subject to this paragraph include the following:

(i) Live programs.

(I) One contact hour equals 1 continuing competence unit (CCU).

(II) Documentation must include the name and license number of the licensee; the title, sponsor/provider, date(s), and location of the course; the number of CCUs awarded, the signature of an authorized signer, and the accredited provider or program approval number.

(III) If selected for audit, the licensee must submit the specified documentation.

(ii) Self-study programs - structured, self-paced programs or courses offered through electronic media (for example, via the internet or on DVD) or on paper (for example, a booklet) completed without direct supervision or attendance in a class.

(I) One contact hour equals 1 CCU.

(II) Documentation must include the name and license number of the licensee; the title, sponsor/provider, date(s), and instructional format of the course; the number of CCUs awarded, the signature of an authorized signer, and the accredited provider or program approval number.

(III) If selected for audit, the licensee must submit the specified documentation.

(iii) Regular inservice-type programs over a one-year period where individual sessions are granted 2 CCUs or less.

(I) One contact hour equals 1 CCU.

(II) Documentation must include the name and license number of the licensee; the title, sponsor/provider, date(s), and location of the inservice; the signature of an authorized signer, and the accredited provider or program approval number with the maximum CCUs granted and the CCU value of each session or group of sessions specified and justified.

(III) Additionally, proof of attendance to any or all inservice sessions must be provided so that individual CCUs earned can be calculated by the program sponsor/provider for submission to the board-approved organization.

(IV) If selected for audit, the licensee must submit the specified documentation.

(iv) Large conferences with concurrent programming.

(I) One contact hour equals 1 CCU.

(II) Documentation must include the licensee's name and license number; title, sponsor/provider, date(s); and location of the conference; the number of CCUs awarded, the signature of an authorized signer, and the accredited provider or course approval number.

(III) If selected for audit, the licensee must submit the specified documentation and proof of attendance.

(2) College or university courses.

(A) Courses at regionally accredited U.S. colleges or universities easily recognizable as pertinent to the physical therapy profession and in the areas of ethics, professional responsibility, clinical application, clinical management, behavioral science, science, or risk management.

(i) The course must be at the appropriate educational level for the PT or the PTA.

(ii) All courses in this paragraph are subject to the following:

(I) One satisfactorily completed credit hour (grade of C or equivalent, or higher) equals 10 CCUs.

(II) Documentation required for consideration is the course syllabus for each course and an official transcript.

(III) If selected for audit, the licensee must submit the approval letter from the board-approved organization.

(B) Courses submitted to meet the ethics/professional responsibility requirement must be approved as stated in §341.2 of this chapter (relating to Continuing Competence Requirements).

(C) College or university sponsored CE programs (no grade, no official transcript) must comply with paragraph (1)(A) of this section.

(D) College or university courses that are part of a post-professional physical therapy degree program, or are part of a CAPTE-accredited program bridging from PTA to PT, are automatically approved and are assigned a standard approval number by the board-approved organization. If selected for audit, the licensee must submit an official transcript.

(3) Scholarship.

(A) Publications. Publication(s) pertinent to physical therapy and in the areas of ethics, professional responsibility, clinical practice, clinical management, behavioral science, science, or risk management written for the professional or lay audience. The author(s) are prohibited from self-promotion of programs, products, and/or services in the publication.

(i) The publication must be published within the 24 months prior to the license expiration date.

(ii) CCU values for types of original publications are as follows:

(I) A newspaper article (excluding editorials and opinion pieces) may be valued up to 3 CCUs.

(II) A regional/national magazine article (excluding editorials and opinion pieces) may be valued up to 10 CCUs.

(III) A case study in a peer reviewed publication, monograph, or book chapter(s) is valued at 20 CCUs.

(IV) A research article in a peer reviewed publication, or an entire book is valued at 30 CCUs.

(iii) Documentation required for consideration is:

(I) For newspaper articles, a copy of the article and the newspaper banner, indicating the publication date.

(II) For magazine articles and publications in peer reviewed journals, a copy of the article and the Table of Contents

page of the publication showing the author's name and the name and date of the publication.

(III) For monographs or single book chapters, a copy of the first page of the monograph or chapter, and the Table of Contents page of the publication showing the author's name and the name and date of the publication.

(IV) For an entire book or multiple chapters in a book, the author must submit the following: title page, copyright page, entire table of contents, preface or forward if present, and one book chapter authored by the licensee.

(iv) If selected for audit, the licensee must submit the approval letter from the board-approved organization.

(B) Manuscript review. Reviews of manuscripts for peer-reviewed publications pertinent to physical therapy and in the areas of ethics, professional responsibility, clinical practice, clinical management, behavioral science, science, or risk management.

(i) The review must be completed within the 24 months prior to the license expiration date.

(ii) One manuscript review is valued at 3 CCUs.

(iii) For each renewal:

(I) PTs may submit no more than 3 manuscript reviews (9 CCUs).

(II) PTAs may submit no more than 2 manuscript reviews (6 CCUs).

(iv) Documentation required for consideration is a copy of the letter or certificate from the publisher confirming completion of manuscript review.

(v) If selected for audit, the licensee must submit the approval letter from the board-approved organization.

(C) Grant proposal submission. Submission of grant proposals by principal investigators or co-principal investigators for research that is pertinent to physical therapy and in the areas of ethics, professional responsibility, clinical practice, clinical management, behavioral science, science, or risk management.

(i) The grant proposal must be submitted to the funding entity within the 24 months prior to the license expiration date.

(ii) One grant proposal is valued at 10 CCUs.

(iii) Licensees may submit a maximum of 1 grant proposal (10 CCUs).

(iv) Documentation required for consideration is a copy of the grant and letter submitted to the grant-provider.

(v) If selected for audit, the licensee must submit the approval letter from the board-approved organization.

(D) Grant review for research pertinent to healthcare.

(i) The review must be completed within the 24 months prior to the license expiration date.

(ii) One grant review is valued at 3 CCUs.

(iii) Licensees may submit a maximum of 2 grant reviews (6 CCUs).

(iv) Documentation required for consideration is a letter or certificate confirming grant review from the grant-provider.

(v) If selected for audit, the licensee must submit the approval letter from the board-approved organization.

(4) Teaching and Presentation Activities.

(A) First-time development or coordination of course(s) in a CAPTE-accredited PT or PTA program, a post-professional physical therapy degree program, or a CAPTE-accredited program bridging from PTA to PT. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) The course must be offered for the first time within the 24 months prior to the license expiration date.

(ii) One student contact hour equals 4 CCUs.

(iii) Licensees are limited to the following number of CCUs:

(I) PTs may submit a maximum of 10 CCUs for this activity.

(II) PTAs may submit a maximum of 8 CCUs for this activity.

(iv) If selected for audit, the licensee must submit a copy of the course syllabus indicating the licensee as course coordinator or primary instructor.

(B) First-time development or coordination of course(s) in a regionally accredited U.S. college or university program for other health professions.

(i) The course must be offered for the first time within the 24 months prior to the license expiration date.

(ii) One student contact hour equals 4 CCUs.

(iii) Licensees are limited to the following number of CCUs:

(I) PTs may submit a maximum of 10 CCUs for this activity.

(II) PTAs may submit a maximum of 8 CCUs for this activity.

(iv) Documentation required for consideration is a copy of the course syllabus indicating the licensee as course coordinator or primary instructor.

(v) If selected for audit, the licensee must submit the approval letter from the board-approved organization.

(C) Presentation or instruction as a guest lecturer in a CAPTE-accredited PT or PTA program, or a post-professional physical therapy degree program, or a CAPTE-accredited program bridging from PTA to PT. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) One student contact hour equals 2 CCUs.

(ii) Licensees are limited to the following number of CCUs:

(I) PTs may submit a maximum of 10 CCUs for this activity.

(II) PTAs may submit a maximum of 8 CCUs for this activity.

(iii) If selected for audit, the licensee must submit a copy of the course syllabus indicating the licensee as course presenter or instructor.

(D) Presentation or instruction as a guest lecturer in a regionally accredited U.S. college or university program for other health professions.

(i) One student contact hour equals 2 CCUs.

(ii) Licensees are limited to the following number of CCUs:

(I) PTs may submit a maximum of 10 CCUs for this activity.

(II) PTAs may submit a maximum of 8 CCUs for this activity.

(iii) Documentation required for consideration is a copy of the course syllabus indicating the licensee as course coordinator or primary instructor.

(iv) If selected for audit, the licensee must submit the approval letter from the board-approved organization.

(E) First-time development, presentation or co-presentation at state, national or international workshops, seminars, or professional conferences, or at a board-approved continuing education course.

(i) The course must be offered for the first time within the 24 months prior to the license expiration date.

(ii) One contact hour equals 4 CCUs.

(iii) Licensees are limited to the following number of CCUs:

(I) PTs may submit no more than 10 CCUs for this activity.

(II) PTAs may submit no more than 8 CCUs for this activity.

(iv) Documentation required for consideration includes one of the following: a copy of a brochure for the presentation indicating the licensee as a presenter; or, a copy of the cover from the program and page(s) indicating the licensee as a presenter.

(v) If selected for audit, the licensee must submit the approval letter from the board-approved organization.

(F) Service as a clinical instructor for full-time, entry-level PT or PTA students enrolled in accredited education. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) The instructorship must be completed within the 24 months prior to the license expiration date.

(ii) Valuation of clinical instruction is as follows:

(I) Supervision of full-time PT or PTA students for 6-11 weeks is valued at 5 CCUs.

(II) Supervision of full-time PT or PTA students for 12 weeks or longer is valued at 10 CCUs.

(iii) Licensees are limited to the following number of CCUs:

(I) PTs may submit a maximum of 10 CCUs for this activity.

(II) PTAs may submit a maximum of 8 CCUs for this activity.

(iv) If selected for audit, the licensee must submit a letter or certificate from the coordinator of clinical education confirm-

ing clinical supervision and the number of hours supervised from the education program.

(5) Advanced Training, Certification, and Recognition.

(A) Specialty Examinations. The Board will maintain and make available a list of recognized specialty examinations. Successful completion of a recognized specialty examination (initial or recertification) is automatically approved and assigned a standard approval number by the board-approved organization.

(i) The specialty examination must be successfully completed within the 24 months prior to the license expiration date.

(ii) Each recognized specialty examination is valued at 30 CCUs.

(iii) If selected for audit, the licensee must submit a copy of the letter from the certifying body notifying the licensee of completion of the specialty from the credentialing body, and a copy of the certificate of specialization.

(iv) A specialty examination not on the list of recognized examinations but pertinent to the physical therapy profession may be submitted to the board-approved organization for consideration. Documentation required for consideration includes the following:

(I) Identification and description of the sponsoring organization and its authority to grant a specialization to PTs or PTAs;

(II) A complete description of the requirements for specialization including required clock hours of no less than 1,500 completed within the prior 24 months;

(III) A copy of the letter notifying the licensee of completion of the specialty from the certifying body, and a copy of the certificate of specialization.

(B) American Physical Therapy Association (APTA) Certification for Advanced Proficiency for the PTA. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) The certification must be successfully completed within the 24 months prior to the license expiration date.

(ii) Completion of specialty certification is valued at 20 CCUs.

(iii) If selected for audit, the licensee must submit a copy of the letter notifying the licensee of completion of the advanced proficiency, and a copy of the certificate of proficiency.

(C) Residency or fellowship relevant to physical therapy. The Board will maintain and make available a list of recognized residencies and fellowships. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) The residency or fellowship must be successfully completed within the 24 months prior to the license expiration date.

(ii) Completion of the residency or fellowship is valued at 30 CCUs.

(iii) If selected for audit, the licensee must submit a copy of the letter notifying the licensee of completion of the fellowship, and a copy of the fellowship certificate.

(D) Supervision or mentorship of a resident or fellow in an APTA credentialed residency or fellowship program. This activ-

ity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) Clinical supervision of residents or fellows for 1 year is valued at 10 CCUs.

(ii) Licensees may submit a maximum of 20 CCUs for this activity.

(iii) If selected for audit, the licensee must submit a copy of a letter from the credentialed residency or fellowship program confirming participation as a clinical mentor, with the length of time served as a clinical mentor.

(E) Practice Review Tool (PRT) of the Federation of State Boards of Physical Therapy (FSBPT). This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) Completion of a PRT is valued at 15 CCUs.

(ii) If selected for audit, the licensee must submit a copy of the FSBPT certificate of completion.

(6) Professional Membership and Service. Licensees may submit activities in this category for up to one half of their CC requirement (PT - 15 CCUs, PTAs - 10 CCUs) at time of renewal. Licensees must demonstrate membership or participation in service activities for a minimum of one year during the renewal period to receive credit. Credit is not prorated for portions of years.

(A) Membership in the APTA. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) One year of membership is valued at 1 CCU.

(ii) If selected for audit, the licensee must submit a copy of the current membership card.

(B) Service on a board, committee, or taskforce for the Texas Board of Physical Therapy Examiners, the APTA (or an APTA component), or the FSBPT. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) One year of service is valued at 3 CCUs.

(ii) Licensees are limited to the following number of CCUs per renewal:

(I) PTs may submit a maximum of 9 CCUs for this activity.

(II) PTAs may submit a maximum of 6 CCUs for this activity.

(iii) If selected for audit, the licensee must submit a copy of a letter on official organization letterhead or certificate confirming completion of service.

(C) Service as a TPTA Continuing Competence Approval Program reviewer. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) One year of service is valued at 3 CCUs.

(ii) Licensees are limited to the following number of CCUs per renewal:

(I) PTs may submit a maximum of 6 CCUs for this activity.

(II) PTAs may submit a maximum of 6 CCUs for this activity.

(iii) If selected for audit, the licensee must submit a copy of a letter or certificate confirming completion of service on official organization letterhead.

(D) Service as an item writer for the national PT or PTA exam. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) One year of service is valued at 5 CCUs.

(ii) Licensees are limited to the following number of CCUs per renewal:

(I) PTs may submit a maximum of 10 CCUs for this activity.

(II) PTAs may submit a maximum of 10 CCUs for this activity.

(iii) If selected for audit, the licensee must submit a copy of a letter or certificate confirming completion of service on official organization letterhead.

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22 TAC §341.6

The Texas Board of Physical Therapy Examiners adopts amendments to §341.6, concerning License Restoration, without changes to the proposed text as published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7060).

The amendments make it easier for more PTs and PTAs whose licenses have expired to return to the workforce in Texas.

The amendments reflect changes to the law during the last session by setting the requirements licensees must meet before restoring or reinstating a Texas license that has been expired one year or more.

No comments were received regarding the proposed amendments.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 361. ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §361.1

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 TAC §361.1 (Board Rule §361.1), relating to Definitions, without changes to the proposed text as published in the November 8, 2013, issue of the *Texas Register* (38 TexReg 7814).

The Board adopts amendments which set forth the definitions of certain terms used in Title 8, Chapter 1301 of the Texas Occupations Code and the Board's administrative rules.

HB 2062 amends Texas Occupations Code §1301.053(a) to require a license for the treatment of rainwater to supply a plumbing fixture or appliance. The definition of plumbing in Board Rule §361.1(38), now renumbered as Board Rule §361.1(41), is adopted to include the treatment of rainwater to supply a plumbing fixture or appliance.

HB 2062 amends the term "water supply protection specialist" to include a person who holds an endorsement by the Board to engage in the treatment of rainwater. The term "water supply protection specialist" in Board Rule §361.1(55), now renumbered as Board Rule §361.1(58), is amended accordingly.

HB 2062 amends Texas Occupations Code §1301.002(12) which defines the term "water treatment" to exclude the treatment of rainwater or the repair of systems for rainwater harvesting. Board Rule §361.1(56), now renumbered as Board Rule §361.1(59), is therefore adopted to reflect this statutory change.

SB 162 defines "military service member," "military spouse," and "military veteran." These terms are incorporated in Board Rule §361.1 as new paragraphs (32), (33), and (34).

No comments were received on the proposed amendment.

The amendments to Board Rule §361.1 are adopted under and affect Chapter 1301 of the Texas Occupations Code. Texas Occupations Code §1301.251 requires the Board to adopt and enforce rules necessary to administer Chapter 1301 of the Texas Occupations Code.

No other statute, article, or code is affected by this adoption.

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

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22 TAC §361.6

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 TAC §361.6 (Board Rule §361.6), concerning Fees, without changes to the proposed text as published in the November 8, 2013, issue of the *Texas Register* (38 TexReg 7818).

The Board adopts amendments to Board Rule §361.6, which specify certain fees charged by the Board, including fees for initial applications for licenses, endorsements, and registrations, as well as examinations, renewals, and late renewal fees.

The adopted amendments to Board Rule §361.6 are necessary in order for the Board to utilize revenue, as provided in Article VIII and Article IX of the General Appropriations Act (Senate Bill 1, 83rd Legislature, Regular Session), which is contingent upon the Board assessing fees sufficient to generate \$682,394 in additional revenue, during the 2014-2015 biennium. Under the current fee structure, the Board may not generate enough revenue during the 2014-2015 biennium to meet the amount necessary for the Board to access the contingent revenue.

Senate Bill 1 provides additional funding to the Board contingent upon the Board assessing fees sufficient to generate \$682,394 in additional revenue, during the 2014-2015 biennium. The fees for initial licenses and registrations in Board Rule §361.6(a)(1)(A), (B), (C), (J), and (K) are amended to \$420, \$75, \$40, \$35, and \$15 respectively. The fees for renewals in Board Rule §361.6(a)(3)(A), (B), (C), (K), (L), and (M) are amended to \$420, \$75, \$40, \$75, \$35, and \$15 respectively.

In addition and as required by §1301.403(e) of the Plumbing License Law, individuals who fail to renew any of the above-stated licenses or registrations by the annual renewal date of the license or registration must pay an additional late fee in order to renew a license. Individuals who renew an expired license or registration within 90 days after the expiration of the license or registration, will pay an additional increased late renewal fee equal to one-half of the renewal fee. Individuals who renew an expired license or registration more than 90 days after the expiration of the license or registration, will pay an additional increased late renewal fee equal to the renewal fee. The additional fees for late renewal in Board Rule §361.6(a)(4)(A)(i)(I) - (II), (ii)(I) - (II), (vi)(I) - (II), (x)(I) - (II), (xii) - (II), and (xiii)(I) - (II) are amended to \$210, \$420, \$37.50, \$75, \$20, \$40, \$37.50, \$75, \$17.50, \$35, \$7.50, and \$15 respectively.

No comments were received on the proposed amendments.

The amendments to Board Rule §361.6 are adopted under and affect Title 8, Chapter 1301, Texas Occupations Code ("Plumbing License Law" or "Act"), §§1301.251, 1301.253, and 1301.403, the rule it amends and the General Appropriation Act, Article VIII, Board of Plumbing Examiners (Senate Bill 1,

83rd Legislature, Regular Session). Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. Section 1301.253 requires the Board to set fee amounts that are reasonable and necessary to cover the costs of administering the Act. Section 1301.403 sets forth the requirements for renewal of a license. The General Appropriations Act, Article VIII and Article IX (Senate Bill 1, 83rd Legislature, Regular Session), provides additional funding to the Board contingent upon the Board assessing fees sufficient to generate \$682,394 in additional revenue, during the 2014-2015 biennium.

No other statute, article, or code is affected by this adoption.

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

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Lisa Hill

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CHAPTER 363. EXAMINATION AND REGISTRATION

22 TAC §363.1

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 TAC §363.1 (Board Rule §363.1), concerning Qualifications, without changes to the proposed text as published in the November 8, 2013, issue of the *Texas Register* (38 TexReg 7821).

Subsection (f)(3) was amended by the renumbering and the replacement of paragraph (3) with paragraph (4) thereby amending paragraph (4)(E)(i) to reflect that the International Conference of Building Officials (ICBO), Building Officials and Code Administrators International (BOCA) and the Southern Building Code Congress International (SBCCI) have been incorporated into the International Code Council (ICC).

Amended and newly created subsection (f)(3) adds a qualifier for applicants wishing to take the Plumbing Inspector examination mandating that each applicant obtain 24 hours of Board approved training as a Water Supply Protection Specialist prior to being examined as a Plumbing Inspector.

Subsection (g)(2) was amended so that it correctly cites the title of the latest edition of the National Fire Protection Association's Health Care Facilities Code.

Subsection (i) has been amended with the elimination of paragraph (2) and the renumbering of paragraph (3) to paragraph (2) adding greater clarity by specifically including rainwater harvesting as part of the Board approved teaching curriculum for the Water Supply Protection Specialist endorsement.

Subsection (n) has been added due to statutory changes brought about by the passage of Senate Bill (SB) 162 and House Bill

(HB) 2028 during the regular session of the 83rd Texas Legislature (2013). SB 162 and HB 2028 require that state agencies that issue licenses shall, with respect to an applicant who is a military service member or military veteran, credit verified military service, training, or education toward the licensing requirements, other than an examination requirement. Pursuant to SB 162, the statutory change does not apply to an applicant who holds a restricted license issued by another jurisdiction or has an unacceptable criminal history according to the applicable law of the agency.

No comments were received on the proposed amendments.

The amendments to Board Rule §363.1 are adopted under and affect Chapter 1301 of the Texas Occupations Code. Texas Occupations Code §1301.251 requires the Board to adopt and enforce rules necessary to administer Chapter 1301 of the Texas Occupations Code.

No other statute, article, or code is affected by this adoption.

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

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Executive Director

Texas State Board of Plumbing Examiners

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For further information, please call: (512) 936-5224



22 TAC §363.11

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 TAC §363.11 (Board Rule §363.11), concerning Endorsement Training Programs, with nonsubstantive changes to the rule text as published in the November 8, 2013, issue of the *Texas Register* (38 TexReg 7825). The text will be republished

The adopted amendments to Board Rule §363.11 set forth the criteria for endorsement training programs.

The Board received a comment concerning Board Rule §363.11(c)(3) from Mr. David Alexander, a Plumbers Professional Continuing Education instructor. Mr. Alexander believes that setting a maximum of eight hours of instruction per day would prevent an instructor from teaching longer if needed.

Ms. Nancy Jones of the Associated Plumbing-Heating-Cooling Contractors of Texas (PHCC Texas) also commented on Board Rule §363.11(c)(3). She stated that there might be days when an instructor may need an extra hour or two to present materials. She suggested that the rule read "no more than ten hours a day" of instruction. She stated that plumber apprentice classes are ten hours a day and that this is not a problem.

Staff recommends that a maximum of eight hours of instruction is an appropriate period of time for course instruction and is conducive to worker learning and retention.

The International Code Council submitted a comment regarding Board Rule §363.11(c)(1). The Code Council requests that the Board amend the proposed language of this rule to state that a portion of the training program for the Water Supply Protection Specialty endorsement examination shall include information specific to rainwater harvesting as outlined in the latest edition of the Texas Water Development Board's Rainwater Harvesting Manual and the latest edition of the Uniform Plumbing Code (UPC) Rainwater Harvesting Seminar Manual or the use of the Code Council's 2015 International Plumbing Code (IPC) and International Green Construction Code's (IgCC) rain water catchment provisions.

The International Code Council proposed the following rule amendment:

"A portion of the training program shall include information specific to rainwater harvesting as outlined in the latest edition of the Texas Water Development Board's Rainwater Harvesting Manual and or the latest edition of the Uniform Plumbing Code (UPC) Rainwater Harvesting Seminar Manual or training based on the 2015 or the latest edition of the International Plumbing Code (IPC) Chapter 13 - Nonpotable Water Systems; Section 1301: General; Section 1303: Non-Potable Rainwater Collection and Distribution Systems and the 2012 or latest edition of the International Green Construction Code Chapter 7 - Water Resource Conservation, Quality and Efficiency; Section 706: Nonpotable Water Requirements and Section 707: Rainwater Collection and Distribution Systems."

Staff is not opposed to the recommendation of the International Code Council because the UPC and IPC have been adopted by the Board as reflected in Texas Occupations Code §1301.255.

The amendments to Board Rule §361.11 are adopted under and affect Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by this adoption.

§363.11. *Endorsement Training Programs.*

(a) General requirements for Course Providers and Course Instructors

(1) Any person who seeks to provide a training program as a prerequisite for qualifying to take an examination to obtain any endorsement issued by the Board may apply to the Board for approval as a Course Provider.

(2) Any person who seeks to provide instruction of such training programs must be employed by an approved Course Provider. He or she may apply to the Board through an approved Course Provider to be approved as a Course Instructor.

(A) Each Course Instructor must be:

(i) a licensed Journeyman or Master Plumber and hold the particular endorsement relevant to the training program that the Course Instructor will teach; or

(ii) a licensed Plumbing Inspector who has completed the training and examination requirements required to obtain the particular endorsement relevant to the training program that the Course Instructor will teach.

(B) Each Course Instructor will be required to successfully complete a Board approved instructor training program of 160 hours which meets the following criteria:

(i) 40 hours to provide the instructor with the basic educational techniques and instructional strategies necessary to plan and conduct effective training programs;

(ii) 40 hours to provide the instructor with the basic techniques and strategies necessary to analyze, select, develop, and organize instructional material for effective training programs;

(iii) 40 hours to provide the instructor with the basic principles, techniques, theories, and strategies to establish and maintain effective relationships with students, co-workers, and other personnel in the classroom, industry, and community; and

(iv) 40 hours to provide the instructor with the basic principles, techniques, theories, and strategies to communicate effectively with the use of instructional media.

(C) To maintain status as an approved Course Instructor of an endorsement training program, the Course Instructor shall undergo one of the instructor training programs required under subparagraph (B) of this paragraph every twelve (12) months such that the entire training (160 hours) is completed within four years.

(3) Course Providers and Course Instructors shall adhere to the instruction criteria approved by the Board in this section, and ensure that only students who receive the specified number of contact hours of instruction (excluding any time spent on breaks from instruction) receive credit for completing the training required by this section.

(4) The training required by this section may be provided in increments, as appropriate, and the Course Provider or Course Instructor shall provide a certificate of completion to the student, upon completion of the training.

(A) The certificate of completion shall state:

(i) the title of the training program related to the particular endorsement;

(ii) the names of the Course Provider and Course Instructor;

(iii) the name and license number of the student; and

(iv) the date that the instruction was completed.

(B) The Course Provider shall maintain a record of the information contained on each certificate of completion for at least two years.

(5) Each Course Provider shall notify the Board at least seven (7) days before conducting training programs or electronically post notice of the class schedule on the provider's website at least seven (7) days before conducting a class. The notice shall contain the date(s), time(s) and place(s) where the class(es) will occur.

(6) Each Course Provider shall perform self-monitoring to ensure compliance with this section and reporting as required by the Board.

(7) The Board may monitor endorsement training programs to ensure compliance with this section.

(8) Any failure on the part of a Course Provider or Course Instructor to abide by the requirements of this section may result in the denial, probation, suspension, or revocation of Board approval as a Course Provider or Course Instructor.

(b) Medical Gas Piping Installation Endorsement training programs

(1) Before a Plumbing Inspector, Journeyman, or Master Plumber may qualify to take the Medical Gas Piping Installation en-

dorsement examination, the applicant must complete a training program approved by the Board which pertains to subject matter applicable to the installation of medical gas piping systems. As a minimum, the training course shall be based on the standards contained in the latest edition of the National Fire Protection Association (NFPA) 99 Health Care Facilities Code.

(2) Course Providers shall provide lesson plans for Board approval. Approved Course Providers of medical gas training shall furnish a program consisting of a classroom presentation of course material, a test of the enrollee's comprehension of the matter, a shop demonstration of the proper brazing procedures by the Course Instructor, and the enrollee's final brazing evidence to the instructor of an accepted vertical and horizontal practice coupon.

(A) A minimum of 24 hours shall be assigned for the classroom presentation and testing.

(B) In addition, a minimum of four (4) hours shall be assigned to the brazing demonstrations. The student enrolled in medical gas training will have completed a minimum of eight (8) hours of practice brazing coupons in an equipped shop. These coupons will be presented to the Course Instructor for grading.

(C) The aforementioned hours represent the minimum requirements only; additional time may be included in each segment of the program.

(c) Water Supply Protection Specialist Endorsement training programs

(1) Before a Journeyman or Master Plumber may qualify to take the Water Supply Protection Specialist endorsement examination, the applicant must complete a training program approved by the Board, which pertains to subject matter applicable to the protection of public and private potable water supplies, as required by the plumbing codes, laws and regulations of this state. A portion of the training program shall include information specific to rainwater harvesting as outlined in the latest edition of the Texas Water Development Board's Rainwater Harvesting Manual and the latest edition of the Uniform Plumbing Code (UPC) Rainwater Harvesting Seminar Manual.

(2) Any person wishing to offer a Board approved training program in Water Supply Protection Specialist Endorsement to the public must submit a course outline, together with the number of hours of instruction, to the Board for approval.

(3) The training program must be at least 24 hours with a maximum of eight (8) hours of instruction per day and comply with the following minimum guidelines:

(A) a six (6) hour review of the significance of cross-connections, the principles of back pressure and back siphonage, thermal expansion, the acceptable devices and/or requirements for a public water supply system including, but not limited to, approved backflow protection devices, shut-off valves, water meters, and containment vessels;

(B) a two (2) hour review of the applicable standards, codes, and laws, including but not limited to the Plumbing License Law, Board rules, the Texas Commission on Environmental Quality rules relating to a public water supply and water reuse, as described in the Texas Water Development Board's Rainwater Harvesting Manual, and the Texas A&M AgriLife Extension Service recommendations;

(C) a four (4) hour review of the specific parts and terminology, and the concepts and components of a rainwater harvesting system, including proper sizing for all water reuse systems;

(D) an eight (8) hour review of the acceptable type, material, location, limitation, and correct installation of equipment related to the treatment and reuse of water;

(E) four (4) hours devoted to the elements of a proper customer service inspection as required by the Texas Commission on Environmental Quality;

(4) Board approved Course Providers and Course Instructors who are approved to provide and instruct Continuing Professional Education (CPE) courses, under Board Rule §365.14 (relating to Continuing Professional Education Programs), may utilize another governmental or industry recognized entity to provide a portion of the course instruction.

(5) The Board may require resubmission for approval of any previously approved Water Supply Protection Specialist endorsement training program to ensure that the program meets current requirements of the plumbing codes, laws, and regulations of the state which pertain to the protection of public and private potable water supplies.

(d) Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement training programs

(1) Before a Plumbing Inspector, Journeyman or Master Plumber may qualify to take the Multipurpose Residential Fire Protection Sprinkler System Inspector examination or Multipurpose Residential Fire Protection Sprinkler Specialist endorsement examination, the applicant must complete a training program which pertains to subject matter applicable to a multipurpose dwelling fire sprinkler system, as required by the National Fire Protection Association Standard 13D.

(2) The training program must incorporate the training criteria included in the American Society of Sanitary Engineering Series 7000, as it relates to plumbing-based residential fire protection systems installers for one and two family dwellings.

(3) The training program must be at least 24 hours in length, using the following minimum guidelines:

(A) one (1) hour to review applicable standards, codes, and laws, including the Plumbing License Law, Board Rules and the fire sprinkler rules, 28 TAC §§34.701 et seq., and their integration and identifying the enforcing authorities;

(B) four (4) hours to study definitions, to identify as a minimum the various types, specific parts, specific terminology and concepts of the system;

(C) four (4) hours to learn the acceptable type, material, location, limitation and correct installation of equipment including but not limited to pipe, fittings, valves, types of sprinkler heads, supports, drains, test connections, automatic by-pass valve, smoke alarm devices, other appurtenances;

(D) two (2) hours to learn the acceptable type, configuration, and material which may or may not be required for a water supply including but not limited to backflow preventers, shut off valves, water meters, water flow detectors, tamper switches, test connections, pressure gages, minimum pipe sizes, storage tanks, and wells including the ability to perform a water flow test of a city water supply;

(E) eight (8) hours to learn which rooms require sprinklers and the correct positioning of a sprinkler head based on its type, listing, temperature rating, and the building structure including but not limited to understanding the concepts of the area of coverage, spacing, distance from walls and ceilings, listing limitations, dead air pockets, manufacturer's requirements and obtaining knowledge of how structural features such as flat, sloped, pocket, or open joist ceilings, close proximity to heat sources and other obstructions such as ceiling fans,

surface mounted lights, beams, and soffits may adversely influence the location of a sprinkler head;

(F) three (3) hours to learn critical hydraulic concepts for the installer that may adversely affect the original design plan due to field construction changes including but not limited to remote area sprinkler operation, flow versus pressure, elevation pressure loss, sprinkler K-factors, fixture units, minimum pipe diameters, additional pipe lengths and understand which household water appliances affect or do not affect the sprinkler hydraulics/performance; and

(G) two (2) hours to learn the required testing, maintenance and documentation including but not limited to the final inspection and tests normally required by the local fire official (AHJ), when permits, working plans, as-built plans or hydraulic calculations are required and who provides for the system maintenance and instructions.

(4) Any person who holds a valid Master or Journeyman Plumber license issued by the Board and a valid RME-General or RME-Dwelling license issued by the State Fire Marshal's Office, Texas Department of Insurance, is exempted from completing the Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement training program described by this section prior to taking the Multipurpose Residential Fire Protection Sprinkler Specialist endorsement examination.

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

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Lisa Hill

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CHAPTER 365. LICENSING AND REGISTRATION

22 TAC §365.1

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 TAC §365.1 (Board Rule §365.1), concerning License, Endorsement and Registration Categories; Description; Scope of Work Permitted, without changes to the proposed text as published in the November 8, 2013, issue of the *Texas Register* (38 TexReg 7827).

The Board adopts amendments to Board Rule §365.1, which pertain to the license, endorsement, and registration categories and the scope of work permitted.

No comments were received on the proposed amendments.

The amendments to Board Rule §365.1 are adopted under and affect Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by this adoption.

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

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22 TAC §365.2

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 TAC §365.2 (Board Rule §365.2), concerning Exemptions, without changes to the proposed text as published in the November 8, 2013, issue of the *Texas Register* (38 TexReg 7829).

The Board adopts amendments to Board Rule §365.2 which describes certain types and conditions relating to work performed without a license used in Title 8, Chapter 1301 of the Texas Occupations Code and the Board's administrative rules.

The adopted amendments to Board Rule §365.2 are due to statutory changes brought about by the passage of House Bill 2062 (HB 2062) during the regular session of the 83rd Texas Legislature (2013).

HB 2062 allows a person to perform water treatment installations, exchanges, services, or repairs without procuring a license other than the treatment of harvested rainwater.

No comments were received on the proposed amendments.

The amendments to Board Rule §365.2 are adopted under and affect Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by this adoption.

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

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22 TAC §365.5

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 TAC §365.5 (Board Rule §365.5), concerning Renewals, without changes to the proposed text as published in the November 8, 2013, issue of the *Texas Register* (38 TexReg 7830).

The Board adopts amendments to Board Rule §365.5 to address the renewal of expedited licenses and registrations issued to military spouses.

The proposed amendments are due in part to statutory changes brought about by the passage of Senate Bill 162 (SB 162) during the regular session of the 83rd Texas Legislature (2013).

SB 162 requires that state agencies that issue licenses shall, as soon as practicable, determine the requirements for a military spouse who holds a license to renew that license. A Provision of the statute requires that the agency shall notify the license holder of the requirements for renewing the license in writing or by electronic means.

No comments were received on the proposed amendments.

The amendments to Board Rule §365.5 are adopted under and affect Chapter 1301 of the Texas Occupations Code. Texas Occupations Code §1301.251 requires the Board to adopt and enforce rules necessary to administer the Chapter 1301 of the Texas Occupations Code.

No other statute, article, or code is affected by this adoption.

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

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22 TAC §365.16

The Texas State Board of Plumbing Examiners (Board) adopts new 22 TAC §365.16 (Board Rule §365.16), concerning Expedited Licensing Procedure for Military Spouses, without changes to the proposed text as published in the November 8, 2013, issue of the *Texas Register* (38 TexReg 7831).

The new rule establishes an expedited licensing procedure for military spouses.

The new rule is due to statutory changes brought about by the passage of Senate Bill (SB) 162, during the regular session of the 83rd Texas Legislature (2013).

SB 162 requires that state agencies that issue licenses shall, as soon as practicable after a military spouse files an application for a license, process the application and issue a license to a qualified military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the licensing requirements in Texas. A license issued to a military spouse may not be a provisional

license and must confer the same rights, privileges, and responsibilities as other licenses issued by this Board.

No comments were received on the proposed new rule.

New Board Rule §365.16 is adopted under and affects Chapter 1301 of the Texas Occupations Code. Texas Occupations Code §1301.251 requires the Board to adopt and enforce rules necessary to administer Chapter 1301 of the Texas Occupations Code.

No other statute, article, or code is affected by this adoption.

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

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CHAPTER 367. ENFORCEMENT

22 TAC §367.2

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 TAC §367.2 (Board Rule §367.2), concerning Standards of Conduct, without changes to the proposed text as published in the November 8, 2013, issue of the *Texas Register* (38 TexReg 7831).

The amendments are due to statutory changes brought about by the passage of House Bill (HB) 2062 during the regular session of the 83rd Texas Legislature (2013).

HB 2062 requires that a person who has performed plumbing services provide the customer an invoice or completed contract document on completion of the job, regardless of whether the person charged a fee for performing the services. It also added treatment of rainwater to the list of services a Water Supply Protection Specialist may perform, thus the need for inspectors to be trained in this area before performing these types of inspections.

No comments were received on the proposed amendments.

The amendments to Board Rule §367.2 are adopted under and affect Chapter 1301 of the Texas Occupations Code. Texas Occupations Code §1301.251 requires the Board to adopt and enforce rules necessary to administer the Chapter 1301 of the Texas Occupations Code.

No other statute, article, or code is affected by this adoption.

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

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22 TAC §367.7

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 TAC §367.7 (Board Rule §367.7), concerning Violations of Standards and Practices, without changes to the proposed text as published in the November 8, 2013, issue of the *Texas Register* (38 TexReg 7833).

The amendments to Board Rule §367.7 are due to statutory changes brought about by the passage of House Bill (HB) 2062 during the regular session of the 83rd Texas Legislature (2013).

HB 2062 amends Texas Occupations Code §1301.303(a) to allow the Board to investigate an alleged violation of Texas Occupations Code Chapter 1301 by an owner of a plumbing company who is subject to this chapter.

No comments were received on the proposed amendments.

The amendments to Board Rule §367.7 are adopted under and affect Chapter 1301 of the Texas Occupations Code. Texas Occupations Code §1301.251 requires the Board to adopt and enforce rules necessary to administer Chapter 1301 of the Texas Occupations Code.

No other statute, article, or code is affected by this adoption.

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

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 519. PRACTICE AND PROCEDURE SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §519.8

The Texas State Board of Public Accountancy adopts an amendment to §519.8, concerning Administrative Penalties, without changes to the proposed text as published in the December 6, 2013, issue of the *Texas Register* (38 TexReg 8761). The text of the rule will not be republished.

The amendment eliminates the provision that transfers administrative penalties collected by the Board to the Fifth-Year Accounting Students Scholarship Fund. Administrative penalties collected are now being transferred to General Revenue.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

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

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J. Randel (Jerry) Hill

General Counsel

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For further information, please call: (512) 305-7842



CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER A. CONTINUING PROFESSIONAL EDUCATION PURPOSE AND DEFINITIONS

22 TAC §523.102

The Texas State Board of Public Accountancy adopts an amendment to §523.102, concerning CPE Purpose and Definitions, without changes to the proposed text as published in the December 6, 2013, issue of the *Texas Register* (38 TexReg 8762). The text of the rule will not be republished.

The amendment adds language to emphasize the purposes of and need for CPE for CPAs.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

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

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 19. AGENTS' LICENSING SUBCHAPTER W. REGULATION OF NAVIGATORS FOR HEALTH BENEFIT EXCHANGES

28 TAC §§19.4001 - 19.4017

The commissioner of insurance adopts new Subchapter W, 28 TAC §§19.4001 - 19.4017, concerning Regulation of Navigators for Health Benefit Exchanges. The commissioner adopts the new sections with changes to the proposed text published in the December 6, 2013, issue of the *Texas Register* (38 TexReg 8769).

REASONED JUSTIFICATION.

Subchapter W, 28 TAC §§19.4001 - 19.4017, concerning Regulation of Navigators for Health Benefit Exchanges, ensures the sufficiency of standards applicable to "individuals or entities performing the activities and duties of a navigator as described by Title 42 United States Code (USC) §18031 and any regulation enacted under that section," in accord with Insurance Code Chapter 4154. In addition, it provides a state solution to help and protect Texas consumers by ensuring the security of their private information and ensuring that they are able to find and apply for affordable health coverage under the federally-run health benefit exchange with the assistance of qualified navigators.

Subchapter W, 28 TAC §§19.4001 - 19.4017, is necessary to address insufficiencies the commissioner of insurance has determined exist in federal regulations enacted under 42 USC §18031, including:

- * the inaccessible content of federal standards contained only in federal government contracts;
- * the failure of federal regulations to provide any standards for the regulation of entities or individuals providing navigator services who are not federal navigator grant recipients and do not work with a grant recipient;
- * the failure of federal regulations to require background checks for navigator applicants to prevent convicted felons from providing navigator services;
- * the failure of federal regulations to include standards for education that ensure those who would serve as navigators sufficiently understand Texas-specific Medicaid, applicable state and federal privacy requirements, and ethical behavior;
- * the failure of federal regulations to include privacy requirements applicable to navigators; and

* the failure of federal regulations to include standards for accountability of navigators who cause harm to consumers.

In addition, Subchapter W, 28 TAC §§19.4001 - 19.4017, is necessary to establish a state registration for navigators to ensure that individuals and entities performing the activities and duties of navigators satisfy minimum standards of Insurance Code Chapter 4154 (relating to Navigators for Health Benefit Exchanges). This chapter requires that navigators in Texas have not had a professional license suspended or revoked, have not been the subject of other disciplinary action by a state or federal financial or insurance regulator, and have not been convicted of a felony. The state registration for navigators is also necessary to enable the department to collect information to compile a list of all navigators providing assistance in Texas including an individual navigator's employer or organization, as required by Insurance Code §4154.051(d).

Background - ACA §1311 and SB 1795. The Patient Protection and Affordable Care Act, Public Law 111-148, was enacted on March 23, 2010, and the Health Care and Education Reconciliation Act, Public Law 111-152, which made amendments to the Patient Protection and Affordable Care Act, was enacted on March 30, 2010. Collectively, these laws are referred to as the Affordable Care Act (ACA).

The ACA alters the way health insurance is addressed in federal law. Among other changes, it lays groundwork for a new forum consumers can use to shop for health insurance. The ACA requires creation of "American health benefit exchanges" (exchanges), which are marketplaces through which consumers can purchase health benefit plans that meet minimum requirements of the ACA and the regulations adopted under it. The plans are called "qualified health plans." ACA §1311(b) and §1321(b) call for each state to establish its own exchange no later than January 1, 2014. ACA §1321(c)(1) requires the U.S. Department of Health and Human Services (HHS) to establish and operate such exchanges within states that elect to not establish an exchange or that do not have an exchange operable by January 1, 2014. Federal regulations and guidance generally refer to these exchanges as "federally-facilitated exchanges." Open enrollment in the exchanges began October 1, 2013.

In a letter dated July 9, 2012, Governor Rick Perry informed the secretary of HHS that Texas would not establish an exchange. Governor Perry reiterated this message in a letter dated November 15, 2012.

ACA §1311 requires each exchange to establish a program under which awards are granted to entities that carry out consumer assistance functions. These entities are called "navigators," and their required duties as described by ACA §1311(i)(3) include conducting public education activities to raise awareness of the availability of qualified health plans; distributing fair and impartial information concerning enrollment in qualified health plans, and the availability of premium tax credits under section 36B of the Internal Revenue Code of 1986 cost-sharing reductions under ACA §1402; facilitating enrollment in qualified health plans; providing referrals to any applicable office of health insurance consumer assistance or health insurance ombudsman established under the Public Health Service Act §2793, or any other appropriate state agency or agencies, for any enrollee with a grievance, complaint, or question regarding their health plan, coverage, or a determination under the plan or coverage; and providing information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the exchange. In addition, ACA §1311(i)(4) requires HHS to es-

tablish standards for navigators, including provisions to ensure that any private or public entity selected as a navigator is qualified, and licensed if appropriate, to engage in the navigator activities described in ACA §1311(i) and to avoid conflicts of interest. ACA §1311(i)(5) also requires the HHS Secretary, in collaboration with states, to develop standards to ensure that information made available by navigators is fair, accurate, and impartial.

The 83rd Texas Legislature's regular session convened on January 8, 2013, and adjourned sine die on May 27, 2013. The deadline for filing bills during the regular session was March 8, 2013. As of that date, HHS had proposed no federal standards for navigators. Because federal standards for navigators were not proposed prior to the Legislature's deadline for filing bills, the members of the Legislature did not know what standards would be in place to regulate navigators and provide protection for the citizens of Texas under the new system of exchanges that would begin operation on October 1, 2013.

To address the uncertainty and lack of federal standards for navigators, and to ensure that the authority to set standards for navigators in Texas had been established, Senator Kirk Watson authored SB 1795 and filed it on the filing deadline, March 8, 2013. The intent of SB 1795, as recorded in the author's statement of intent in the Senate Research Center's analysis of the filed bill, is to "provide consumer protection by requiring that navigators, as established by the Patient Protection and Affordable Care Act (Act), have the training necessary to advise and guide the public through the process of finding the most appropriate health insurance options available to them." Additionally, the purpose of the law as stated in Insurance Code §4154.001 is to "provide a state solution to ensure that Texans are able to find and apply for affordable health coverage under any federally run health benefit exchange, while helping consumers in this state."

HHS proposed standards for navigators nearly one month after Senator Watson filed SB 1795. On April 5, 2013, the *Federal Register* included a proposed regulation addressing "Patient Protection and Affordable Care Act; Exchange Functions: Standards for Navigators and Non-Navigator Assistance Personnel" at 78 Fed. Reg. 20581. However, HHS did not adopt the proposed federal regulation during the regular session of the 83rd Texas Legislature, and it was not clear what standards the federal government would ultimately apply to navigators.

SB 1795 proceeded through the legislative process with much support in both the Senate and the House. The bill passed out of the Senate with 30 "yeas" and one "nay." It passed out of the House with 120 "yeas," 26 "nays," and one representative present who did not vote. The Senate concurred with the House amendments to the bill with 30 "yeas" and one "nay," and the bill was passed on May 26, 2013. Governor Perry signed SB 1795 into law on June 14, 2013. The effective date for SB 1795 was September 1, 2013.

Over a month after SB 1795 was signed into law HHS adopted standards for navigators. HHS published its adoption order titled "Patient Protection and Affordable Care Act; Exchange Functions: Standards for Navigators and Non-Navigator Assistance Personnel; Consumer Assistance Tools and Programs of an Exchange and Certified Application Counselors" in the *Federal Register* at 78 Fed. Reg. 42824 on July 17, 2013.

Provisions of SB 1795. SB 1795 adds new Chapter 4154 to Insurance Code Title 13, Subtitle D. SB 1795 requires the commissioner to adopt rules necessary to implement the bill's provisions and to meet the minimum requirements of applicable federal law.

The commissioner must determine whether standards and qualifications for navigators provided under Title 42 USC §18031, which is the codified version of ACA §1311, and any regulations enacted under that section are sufficient to ensure that navigators can perform their required duties. If the commissioner determines that the standards are insufficient, the commissioner must make a good faith effort to work in cooperation with HHS and to propose improvements to the federal standards. If after a reasonable interval the federal standards remain insufficient, the commissioner may adopt rules to establish standards and qualifications to ensure that navigators in Texas can perform their required duties.

SB 1795 specifies minimum standards that must be included in the navigator rules the commissioner adopts. It also requires the commissioner to obtain from the exchange a list of all navigators providing assistance in Texas and, with respect to an individual, the name of the individual's employer or organization. The bill also allows the commissioner to establish, by rule, a state registration for navigators sufficient to ensure that the minimum standards in SB 1795 are satisfied and the information is collected.

SB 1795 includes restrictions on navigator advertising and prohibits a navigator from receiving compensation for services or duties as a navigator that are prohibited by federal law.

The bill requires the commissioner to adopt rules authorizing additional training for navigators as necessary to ensure compliance with changes in state or federal law. In addition, the bill prohibits a navigator from performing certain acts unless the navigator is licensed to act as a life, accident, and health insurance agent.

Federal standards for navigators. Two sections in Title 45 of the Code of Federal Regulations (CFR) address federal standards for navigators, and a third section in the title addresses privacy requirements, including some provisions applicable to navigators. Title 45 CFR §155.210 addresses "Navigator program standards." This section addresses the navigator standards a state-operated exchange must implement. It also addresses requirements for an entity eligible to receive a navigator grant, prohibitions on navigator conduct, and duties of a navigator. Title 45 CFR §155.215 addresses "Standards applicable to Navigators and Non-Navigator Assistance Personnel carrying out consumer assistance functions under §155.205(d) and (e) in a Federally-facilitated Exchange and to Non-Navigator Assistance Personnel funded through an Exchange Establishment Grant." Because Texas has a federally-facilitated exchange, this section provides the standards applicable to navigators in Texas. Finally, 45 CFR §155.260 addresses "Privacy and security of personally identifiable information." This section primarily addresses requirements for exchanges, but it also includes a subsection concerning nonexchange entities, including navigators.

Under 45 CFR §155.210, to be eligible to receive a navigator grant an entity or individual must: have or be able to establish relationships with employers, employees, consumers, and self-employed individuals likely to be eligible for enrollment in qualified health plans; meet state and exchange licensing, certification, or other standards that do not prevent the application of the ACA; not have a conflict of interest; and comply with privacy and security standards adopted under 45 CFR §155.260.

The prohibitions on navigator conduct in 45 CFR §155.210 require that an exchange ensure that navigators: not be health or stop loss insurance issuers or subsidiaries of health or stop loss insurance issuers, not be an association with members of or

which lobbies on behalf of the insurance industry, or not receive direct or indirect consideration from health or stop loss insurance issuers for enrollment of individuals or employees in health plans.

The standards in 45 CFR §155.215 address conflicts of interest; training, including certification and recertification standards and training module standards; provision of culturally and linguistically appropriate services; and ensuring access by persons with disabilities.

In part, the conflict of interest standards under 45 CFR §155.215 echo the prohibitions in 45 CFR §155.210. The standards require that navigator entities and grant applicants submit to the exchange a written attestation that the navigator and the navigator's staff are not health or stop loss insurance issuers, are not subsidiaries of health or stop loss insurance issuers, and will not receive direct or indirect consideration from health or stop loss insurance issuers for enrollment of individuals or employees in health plans. In addition, under the section a navigator entity must submit a plan to remain free of conflicts during its term as a navigator. The navigator entity and its staff must provide information to consumers about the full range of qualified health plans and insurance affordability programs available to a consumer. Finally, the navigator entity and its staff must disclose in plain language to the exchange and any consumer the navigator entity assists: all lines of permissible insurance business it intends to sell; any employment relationships with health or stop loss insurance issuers or their subsidiaries it has or it has had within the last five years; and any existing or anticipated financial, business, or contractual relationships with health or stop loss insurance issuers or their subsidiaries.

The conflict of interest standards under 45 CFR §155.215 do not address conflicts of interest due to criminal history of navigators or electioneering by navigators. In addition, they do not state what penalties may result from a navigator entity or its staff failing to comply with the standards, and they do not require that a navigator entity have in place any form of financial responsibility if a consumer is harmed due to a navigator entity or its staff failing to avoid a conflict of interest. The conflict of interest standards also do not address a state's role in taking action if a consumer is harmed due to a navigator's conflict of interest.

The training standards under 45 CFR §155.215 provide certification and recertification standards, and they list training module standards in which navigators must receive training.

Under the certification and recertification standards of 45 CFR §155.215, navigators must register for and complete HHS-approved training. In addition, before assisting consumers, navigators must pass all approved certification examinations based on the HHS-approved training and obtain certification from HHS.

Under 45 CFR §155.215, the training modules in which a navigator must receive training include qualified health plans, how they operate, benefits covered, payment processes, rights and processes for appeals and grievances, and contacting individual health plans; the range of insurance affordability programs, including Medicaid, the Children's Health Insurance Program, and other public programs; tax implications of enrollment decisions; eligibility requirements for premium tax credits and cost sharing reductions, and the impact of premium tax credits on the cost of premiums; federal, state, and local agency contact information for consumers seeking additional information about coverage options not available through the exchange; basic concepts about health insurance and the exchange, such as the benefits

of having health insurance and enrolling through the exchange, and the individual responsibility to have health insurance; eligibility and enrollment rules and procedures, and how to appeal an eligibility determination; providing culturally and linguistically appropriate services; ensuring physical and other accessibility for people with a full range of disabilities; understanding differences among health plans; privacy and security standards under 45 CFR §155.260 for handling and safeguarding consumers' personally identifiable information; working effectively with individuals with limited English proficiency, people with disabilities, and vulnerable, rural, and underserved populations; customer service standards; outreach and education methods and strategies; and applicable administrative rules, processes, and systems related to exchanges and qualified health plans.

The training standards stated in 45 CFR §155.215 do not address Texas-specific Medicaid; privacy beyond the standards under 45 CFR §155.260; or navigator ethics. The listed contents of the training modules do not include such necessary areas as: Texas Medicaid eligibility, enrollment processes, or benefits; Texas statutes and rules protecting nonpublic information; steps to take and authorities to notify if nonpublic information is compromised; insurance fraud and general fraud detection and prevention; ethical behavior of navigators; duty of navigator to a consumer; or the difference between ethics and laws.

The culturally and linguistically appropriate services standards under 45 CFR §155.215 require that navigators ensure that information they provide is culturally and linguistically appropriate to the needs of consumers being served, including individuals with limited English proficiency. Under the standards, navigators must develop and maintain general knowledge about the racial, ethnic, and cultural groups in their service area, including each group's diverse cultural health beliefs and practices, preferred languages, health literacy, and other needs.

Under the culturally and linguistically appropriate services standards of 45 CFR §155.215, navigators must collect and maintain updated information to help understand the composition of the communities in the service area, including the primary languages spoken. They must provide consumers with information and assistance in the consumer's preferred language, at no cost to the consumer, including the provision of oral interpretation of non-English languages and the translation of written documents in non-English languages when necessary or when requested by the consumer, to ensure effective communication. Navigators can only rely on a consumer's family or friends as oral interpreters when requested by the consumer as the preferred alternative to an offer of other interpretive services. Navigators must provide oral and written notice to consumers with limited English proficiency, in their preferred language, to inform them of their right to receive language assistance services and how to obtain them.

Navigators must receive ongoing education and training in culturally and linguistically appropriate service delivery under the culturally and linguistically appropriate services standards of 45 CFR §155.215. They must also implement strategies to recruit, support, and promote a staff that is representative of the demographic characteristics, including primary languages spoken, of the communities in their service area.

The standards ensuring access by persons with disabilities, set out in 45 CFR §155.215, require that navigators ensure that any consumer education materials, websites, or other tools used for consumer assistance purposes are accessible to people with disabilities, including people with sensory impairments, mental

illness, addiction, and physical, intellectual, or developmental disabilities. To ensure effective communication, navigators must also provide auxiliary aids and services for individuals with disabilities at no cost to the individual, when necessary or when requested by a consumer. A navigator may only use a consumer's family or friends as interpreters when the consumer requests their assistance as the consumer's preferred alternative to the offer of other auxiliary aids and services. In addition, a navigator must: provide assistance to consumers in a location and in a manner that is physically and otherwise accessible to individuals with disabilities; ensure that authorized representatives are permitted to assist an individual with a disability to make informed decisions; and acquire sufficient knowledge to refer people with disabilities to local, state, and federal long-term service and support programs. Finally, 45 CFR §155.215 requires that a navigator must be able to work with all individuals regardless of age, disability, or culture, and should seek advice from experts when needed.

The privacy requirements in 45 CFR §155.260 state that an exchange must require that navigators who gain access to personally identifiable information submitted to an exchange, and navigators who collect, use, or disclose personally identifiable information gathered directly from applicants, qualified individuals, or enrollees while performing functions under an agreement with an exchange, must agree to the same or more stringent privacy and security standards as apply to the exchange.

Title 45 CFR §155.260 does not address what privacy requirements apply to a navigator who has not entered into an agreement with an exchange.

Department consideration of federal standards for navigators. After HHS adopted standards for navigators on July 17, 2013, department staff began reviewing them. Additionally, other agencies in Texas concerned with consumer protection reviewed the standards HHS adopted.

In a letter dated August 14, 2013, Texas Attorney General Greg Abbott joined 12 other attorneys general in a letter addressing concerns with the federal regulations. The letter set out issues the attorneys general identified in the federal standards, including inadequate training requirements and less consumer protection than in other contexts. The letter urged further work on the federal standards. It also raised questions about shortcomings in the standards, such as: limited requirements for screening navigator personnel, and lack of required background checks; unclear guidance on protection of consumer privacy, applicability of privacy laws, HHS monitoring of navigator compliance with privacy requirements, and outreach to consumers regarding privacy rights; liability of navigators who cause harm; fraud prevention and penalties for navigators who cause harm or commit fraud; and the role states have in regulating navigators.

In a letter to the commissioner dated September 17, 2013, Governor Perry also addressed concerns with the standards for navigators set out in federal regulations. Governor Perry noted that the nature of a navigator's work and access to confidential information such as birth dates, social security numbers, and financial information make it imperative that navigators have training on the collection and security of data.

On September 30, 2013, the department conducted a stakeholder meeting to gather information from the public regarding registration of navigators, training of navigators, safeguards to protect consumer privacy, and continuing education requirements for navigators. During the meeting 16 people spoke,

including two members of the Legislature, representatives of navigator entities, individual navigators, and representatives of consumer and health care provider groups.

The department invited HHS to participate in the stakeholder meeting to hear and respond to Texas stakeholders' concerns regarding navigators. In response, Gary Cohen, deputy administrator and director of the Center for Consumer Information and Insurance Oversight, replied to the invitation on November 1, 2013, with a request to discuss any issues that arose during the stakeholder meeting.

During the stakeholder meeting, the department learned that one navigator entity in Texas had taken steps to provide protections beyond those set out in federal standards. These steps included background checks on employees and extra training focused on Texas Medicaid and privacy. The department learned that another navigator entity had also addressed possible shortfalls in its own way, by applying privacy rules that it already had in place and using mostly existing staff that were already well-versed in programs such as Medicaid, Medicare, and the Children's Health Insurance Program.

The department received correspondence from other entities and individuals following the stakeholder meeting, with questions about how they could become navigators and how navigators should operate in Texas. In particular, one group that is not operating with the benefit of a federal navigator grant asked for guidance on how it could proceed as a navigator.

The department conducted additional investigation into the federal standards for navigators in follow-up to the stakeholder meeting. The department met or conducted teleconferences with navigator entities, consumer advocates, and representatives of health care provider groups.

The department also conducted multiple conference calls with HHS regarding the federal standards.

In speaking with HHS staff, the department learned much about how the federal government oversees the regulation of navigators and how it applies its standards. Most notably, the department learned that the HHS navigator regulations only apply to entities that receive navigator grants and the individuals who represent those entities as navigators, while other related HHS regulations only apply to certified application counselors or in-person assisters. (Certified application counselors are individuals who provide some consumer service functions similar to those navigators provide, but do so under separate regulations and with separate funding sources. In-person assisters also provide functions similar to navigators, but are employed by contractors hired by HHS.) HHS does not believe it has jurisdiction over any other entity or individual who offers or provides navigator services, and it is up to states to regulate or oversee any entity or individual offering to provide navigator services who is not a federal grant recipient.

Also notable is the fact that many of the standards navigators are held to are not contained in regulation, but rather in contracts between HHS and navigator grant recipients. The department requested a navigator contract in order to view what standards exist, but HHS declined to provide one. The department also requested that HHS provide a contract template, if it determined that it could not release an executed contract, but HHS also declined that request. Finally, the department requested just the portion of a contract addressing navigator privacy standards. HHS initially agreed to provide such a portion, but when the department followed up with HHS on this agreement, HHS

declined to provide an example from a navigator contract, and instead provided a portion from a certified application counselor agreement. The email that included the portion of the certified application counselor agreement included assurance that the "terms of this document are very similar to the ones applicable to navigators."

Though the department was unable to review the actual standards that HHS holds navigators to in its contracts with them, the department did glean from the calls with HHS a picture of what those standards include.

The contracted standards apparently do not include requirements for qualifications of individuals acting as navigators for navigator grant recipients. Instead, HHS evaluated the entities themselves during the grant review process to determine if the organizations met standards that would show they could provide professional and appropriate staff. HHS does not conduct or require a background check on navigators or individuals who represent navigator grant recipients.

Navigators have access to a consumer's name, phone number, and, in some instances, other personal information, and HHS staff said that there are limited circumstances where a navigator may retain personal information for a period of time. However, HHS staff said that navigators cannot access information contained in a consumer's application once the application is submitted. Additionally, HHS encourages navigators to have consumers enter their own information into the online application, to limit navigator access to personal information.

In regard to navigator training, the department learned that any person can access the federal training modules available to navigator grant recipients. An individual who takes and passes the training will receive a certificate saying the individual passed the training, but the individual will not actually be certified by HHS unless the individual is verified by a navigator grant recipient. HHS has not finalized the training requirements for navigators who receive grants in 2014, but HHS will require up to 12 hours of continuing education for those who want to continue as navigators next year.

Following the department's review of the federal regulations setting standards for navigators, meetings with stakeholders, and discussions with HHS, the department posted an outline of solutions for potential insufficiencies identified by department staff. The outline presented steps that could be taken in either federal regulations or state rules to address issues with the standards set by the federal regulations. The department invited the public to comment on the outline, and took into consideration the comments it received in preparation of the rule proposal.

In addition to inviting public comment on the outline, department staff conducted a teleconference with HHS staff on December 2, 2013, to discuss the content of the outline. HHS staff said HHS was not currently considering revising regulations to address the issues raised in the outline and confirmed that solutions set out in the outline did not present federal preemption concerns. HHS staff suggested that the department proceed with its proposal of rules.

Meeting with HHS staff to discuss proposed rule text. Following publication of the proposed rules, department staff met with HHS staff on December 16, 2013, in Washington D.C. to discuss the text of the rule proposal. During this meeting, HHS staff said there were no current plans to revise federal regulations to address the issues identified by the department and did not identify

anything in the proposed rule that would automatically be preempted by federal law.

Commissioner determination regarding sufficiency of federal standards. Insurance Code §4154.051(a) charges the commissioner with reviewing and determining the sufficiency of standards for navigators set under 42 USC §18031 and regulations enacted under that section. Additionally, Insurance Code §4154.051(b) requires the commissioner to establish standards and qualifications to ensure that navigators can perform their required duties. Based on the findings as outlined in the rule proposal and reiterated in this rule adoption order, the commissioner determined there are insufficiencies in the navigator standards set by federal regulation that should be corrected, and in compliance with Insurance Code §4154.051(b), the commissioner adopts standards and qualifications to ensure navigators can perform their required duties.

A fundamental flaw in the HHS standards for navigators is that many of the standards are apparently included in confidential contracts, rather than regulations available for public review. Standards set by contract in this way cannot be enforced by or against entities or individuals who are not party to the contract. Because HHS will not disclose to the department the contents of its contracts with navigators, it is not clear what specific standards are in place and whether standards are uniformly applied to all navigators. In addition, because HHS can change its contracts with navigators, it is not clear if the standards contained in current contracts will be included in future contracts or be applied in the same way over time.

The commissioner finds that insufficiencies exist in the standards set by federal regulations in the following areas: applicability of federal regulations to individuals and entities providing navigator services; qualifications of individuals who serve as navigators; education requirements for navigators; privacy requirements; and accountability of navigators.

Applicability of federal regulations: The standards set by federal navigator regulations under 42 USC §18031 are not applicable to all entities or individuals who purport to be navigators or who provide navigator services. They are only applicable to navigator grant recipients. Entities or individuals who provide navigator services but who are not grant recipients and do not work with a grant recipient are currently unregulated, and HHS said that it is up to states to regulate such entities and individuals.

To address this insufficiency, the commissioner adopts standards under §19.4003 that are generally applicable to all entities and individuals performing the navigator function through a health benefit exchange including federal navigator grant recipients; individuals employed by, associated with, or partnered with a federal navigator grant recipient; and entities or individuals who are neither federal navigator grant recipients, nor employed by, associated with, or partnered with a federal navigator grant recipient.

Qualifications of individuals who serve as navigators: The standards set by federal navigator regulations under 42 USC §18031 do not establish standards for or require background checks of individuals a navigator entity selects to serve as navigators. As acknowledged by HHS Secretary Kathleen Sebelius in a congressional hearing on October 30, 2013, under current federal standards the lack of a required background check means that a convicted felon could be hired as a navigator. During the hearing, Secretary Sebelius repeated a response HHS had included in the adoption order for the regulation setting federal naviga-

tor standards. She said states could create requirements for background checks. If a background check requirement were in place, it would satisfy one of the minimum standards for navigators set by SB 1795 prohibiting convicted felons from being navigators in Texas.

To address this insufficiency and implement the requirement in Chapter 4154, the commissioner adopts standards in §19.4005 that require navigators to: be at least 18 years of age; provide proof of U.S. citizenship or compliance with all federal laws pertaining to employment or to the transaction of business in the United States; provide proof of compliance with education requirements; submit to fingerprinting and a background check; and be an individual eligible for an authorization issued by the department under the guidelines in 28 TAC §1.502 (relating to Licensing Persons with Criminal Backgrounds).

Education requirements for navigators: The standards set by federal navigator regulations under 42 USC §18031 do not require navigators to receive education related to Texas Medicaid, Texas statutes and rules protecting nonpublic information, or ethics.

To address this insufficiency, the commissioner adopts §19.4008, which requires that individuals who would provide navigator services complete 40 hours of training and education consisting of 20 hours attributed to completion of the training required for navigators under any regulation enacted under 42 USC §18031 and 20 hours attributed to completion of a preregistration education course that consists of department-certified Texas-specific training.

Privacy requirements: The standards set by federal navigator regulations under 42 USC §18031 do not establish privacy requirements. Privacy requirements may exist in contracts HHS has with navigators, but the standards are not available for the public to review and may change at any time and without notice to the public.

To address this insufficiency, the commissioner adopts §19.4012, which requires that navigators in Texas comply with the privacy requirements under the Insurance Code and department rules. The privacy requirements in the Insurance Code and department rules work in conjunction with federal privacy requirements to ensure the safety of consumers' nonpublic information.

Accountability of navigators: The standards set by federal navigator regulations under 42 USC §18031 do not address liability of or penalties applicable to navigators who cause harm to consumers.

To address this insufficiency, the commissioner adopts §19.4004, which addresses the registration requirements for navigator entities and individual navigators, including a requirement that individual navigators identify a registered navigator entity the individual will be employed by or associated with as an individual navigator. In addition, the commissioner adopts §19.4010, which requires navigator entities to secure and maintain evidence of financial responsibility to protect individuals against wrongful acts, misrepresentations, errors, omissions, or negligence of the navigator entity, employees of the navigator entity, or navigators associated with or employed by the navigator entity. The commissioner also adopts §19.4011, which requires that individual navigators provide identification to a consumer prior to assisting the consumer with enrollment assistance in a health benefit exchange. The commissioner adopts §19.4013 to set prohibitions on certain activities while

an entity or individual is providing navigator services. Finally, the commissioner adopts §19.4015 to provide for administrative action against entities or individuals who violate Insurance Code Chapter 4154 or department rules.

In addition to adopting these standards as state rules, the commissioner requests that HHS consider implementing them in federal regulations so that other states can have the same protections these rules will provide for Texans. The department will assist HHS in any way it can to revise federal standards for navigators to include the previously noted standards, so that more than just Texas consumers can benefit from the protections these improved standards will provide.

Additional parts of department implementation of SB 1795. SB 1795 set minimum requirements for rules adopted under Chapter 4154. It allows the commissioner to establish a state registration for navigators to ensure that navigators satisfy minimum standards and to enable the commissioner to collect a list of navigators providing assistance in Texas, requires the commissioner to adopt rules authorizing additional training for navigators, as necessary to ensure compliance with changes in state or federal law, and allows the commissioner to adopt rules necessary to implement Chapter 4154.

Insurance Code §4154.051(c) provides that rules adopted by the commissioner must ensure that navigators in Texas have not had a professional license suspended or revoked, have not been the subject of other disciplinary action by a state or federal financial or insurance regulator, and have not been convicted of a felony. The fingerprinting and background requirements the department adopts in §19.4005 are necessary to ensure that the department can satisfy these requirements.

The department adopts the state registration for navigators permitted by Insurance Code §4154.051(e) with §§19.4004, 19.4005, 19.4006, 19.4007, and 19.4014. These sections are necessary to establish the requirement for registration, address eligibility to register, list information the department requires with an application for registration, address renewal of registration, and place limits on use of the term "navigator" by entities and individuals subject to the rules who do not register with the department. In establishing the registration process, the department attempts to limit the impact of the section to entities and individuals with the most direct access to consumer information. To this end, the department requires that only entities and individuals who provide enrollment assistance in a health benefit exchange must register with the department.

Previously in this adoption order the department addressed additional education requirements the commissioner believes necessary to improve the standards applicable to navigators. Topics the commissioner includes in these improved standards also provide for the additional education of navigators as required by Insurance Code §4154.054. The department adopts the education and examination requirements in §19.4008 and addresses qualifications of course providers in §19.4009.

Finally, to adopt rules necessary to implement Insurance Code Chapter 4154, as required by Insurance Code §4154.005, the department adopts a statement of purpose for the rules in §19.4001, definitions for the rules in §19.4002, a severability clause in §19.4016, and an expiration provision in §19.4017.

The department makes the following nonsubstantive changes to the proposed text as a result of comments. These changes do not affect persons not previously on notice or raise new issues.

Section 19.4002(1): The department adopts a revised definition for the term "enrollment assistance in a health benefit exchange" by replacing the phrase "completing the application for health coverage affordability programs" with the words "applying for or enrolling in health coverage affordability programs."

The purpose of this change is to clarify that the definition contemplates assistance in the specific act of applying for health coverage affordability programs available through a health benefit exchange, not merely assistance in completing an application form when the form is used for reasons other than applying for health coverage in the exchange. To further clarify this definition, the department has also incorporated in the definition additional examples of what would constitute providing assistance in the act of applying for health coverage affordability programs available through a health benefit exchange.

Section 19.4002(3), (4), and (5): The department adopts revised definitions for "individual navigator," "navigator entity," and "navigator services."

As proposed, the terms "individual navigator" and "navigator entity" were based on the statutory definition of "navigator" in Insurance Code §4154.002(3), which defines "navigator" as "an individual or entity performing the activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." Rather than using the words "activities and duties of a navigator" in the definitions for "individual navigator" and "navigator entity," the department used the defined term "navigator services." The defined term "navigator services" was intended to capture "activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." However, some commenters did not understand that Insurance Code §4154.002(3) defines the term "navigator" by referencing the activities and duties of a navigator, and use of the department term intended to capture that phrase resulted in further confusion.

To avoid confusion regarding the statutory basis for the definition of "individual navigator" and "navigator entity," the department has revised the definitions of the terms to remove the defined term "navigator services" and incorporate the statutory phrase "activities and duties of a navigator." In addition, the department has revised the definitions of these terms to include a citation to the specific subsection in 42 USC §18031 that sets out the duties of a navigator.

Further, to ensure clarity regarding the statutory basis for the term "navigator services," the department has also revised that term to use the statutory phrase "activities and duties of a navigator." Also, the department has: removed a reference to the adopted rules, as all activities and duties described in them are based on statutory activities and duties; added a citation to the specific subsection in 42 USC §18031 that sets out duties of a navigator; added a citation to Texas Insurance Code §4154.051(a), which is the source of the activities listed in the definition; and revised the list of activities in the definition to include only those most relevant to the need for regulation of navigators.

Section 19.4003(a), (e), and (f): The department adopts a revised §19.4003 (relating to Applicability) to incorporate two additional exceptions to the applicability of the rule.

A commenter pointed out that as part of their job, human resource employees for small businesses may assist employees in enrolling in health benefit plans in the Small Business Health Options Program Marketplace. Such activities would occur un-

der the ACA once the program offers online enrollment, currently delayed until November 2014. The department has revised §19.4003 to include an exception for human resource personnel using the Small Business Health Options Program Marketplace.

Several commenters expressed concern with the applicability of the proposed subchapter. One commenter stated that the proposed rules would require parents to undergo training before helping their adult children. The department has clarified the rule's applicability to state that it does not apply to an individual who only provides navigator services to a person or persons related to the individual within the third degree by consanguinity or within the second degree by affinity, as determined under Government Code Chapter 573, Subchapter B.

Proposed Section 19.4008: The department declines to adopt proposed §19.4008 (relating to Registration and Registration Renewal Fees). Several commenters expressed concern related to the impact of the costs for navigator entities and individual navigators. Other commenters questioned imposing a cost absent a detailed financial note for SB 1795. In response to concerns about proposed fees for navigators, the department has revised the rule text to remove the \$50 navigator registration fee. No fee is required for registration or registration renewal for an individual navigator or a navigator entity.

Section 19.4008: The department adopts a revised §19.4008 (relating to Navigator Education and Examination Requirements) to incorporate a reformulation of the educational requirements. Several commenters expressed concern regarding the cost or number of hours included in the proposed training requirements. Other commenters suggested changes related to the content of the training requirements. Based on comments from stakeholders during the department's review of the federal regulations, the department determined that state-specific training is essential to ensure that navigators are able to provide competent assistance to Texas consumers. However, in response to concerns about training requirements and costs, the department notes that, as adopted, the rules require that only 20 hours of the initial education requirements be state-specific training. The 20 hours must consist of a minimum of five hours on Texas-specific Medicaid and Children's Health Insurance Program provisions, a minimum of five hours on applicable privacy requirements, a minimum of five hours on ethics, a minimum of two hours on basic insurance terminology and how insurance works, a minimum of two hours of exam preparation, and one hour allotted for completion of a final examination.

The department also has clarified that initial or continuing education courses may consist of classroom courses, classroom equivalent courses, self-study courses, or one-time event courses. The adopted rules require that an individual navigator complete and provide proof of the department-certified training required by the adopted rules by May 1, 2014.

Section 19.4009: The department adopts a revised §19.4009 (relating to Course Providers) to specifically include §19.1012 (relating to Forms and Fees) in the list of sections a provider of navigator education must comply with. Section 19.1012 addresses the fees that apply for a provider that wishes to have a course certified by the department. This section would apply to a navigator entity that sought to have its internally developed training course certified by the department.

Section 19.1012 would already apply to a provider wanting to have a course certified, through the reference to §19.1005 in

§19.4009. However, many comments appear to be based on an assumption that only certain vendors will be able to provide navigator training. The specific reference is added in response to those comments, many of which also addressed the costs of providing the required training.

The department is aware that some navigator entities in Texas already supplement federal training with their own training. These navigator entities may want to consider seeking certification of their courses, so that all training can remain in-house. Inclusion of the specific reference to §19.1012 better informs navigator entities of the requirements to become a registered provider of education.

Section 19.4010(a)(4) and §19.4002(2): The department adopts a revised §19.4010 to clarify the applicability of the section, and to provide an alternative method of demonstrating financial responsibility. In response to a comment that some governmental entities may be navigator entities, the department has added new §19.4010(a)(4). The department makes this revision to address instances where a local government performs or oversees the performance of the activities and duties of a navigator, due to the fact that consumer protection concerns are minimized because a local government is already accountable to the public in ways a private organization is not.

In addition, to clarify what constitutes a "governmental entity," the department adopts new §19.4002(2), which defines the term "governmental entity" for purposes of the rules. Incorporation of this new defined term necessitates renumbering of the defined terms that follow it in §19.4002.

As a result of the modification to the section, governmental entities that become navigator entities are able to satisfy the financial responsibility standards in the rule by providing evidence that the navigator entity is a self-insured governmental entity.

Section 19.4013: The department adopts a revised §19.4013 (relating to Prohibitions) to incorporate two clarifications to the rule. The first clarification is in response to comments relating to the prohibitions on the content of the advice a navigator may provide. The language in §19.4013(a)(5) now reads "offer advice or advise consumers on which qualified health plan available through a health benefit exchange is preferable." The department makes the second change in response to comments relating to requests for clarification on what other information a navigator entity or individual may provide. The new subsection references Texas Insurance Code §4154.101(b), and states that a navigator entity or individual can provide information on public benefits and health coverage, or other information and services consistent with the mission of a navigator.

Section 19.4014: The department adopts a revised §19.4014 (relating to Limits on Use of Term "Navigator"). Several commenters expressed concern regarding limits on use of the term "navigator." To clarify the intent of the provision, the department revised the adopted text addressing use of the term "navigator" to clarify that the section only applies to entities and individuals subject to the rules as provided for in §19.4003 (relating to Applicability). The department did this by inserting a reference to §19.4003, which specifies those to whom the adopted rules apply. Additionally, the department revises the specific provision addressing use of the term "navigator" to prohibit "use of the term 'navigator' in a deceptive manner as part of an entity's name or website address or in an individual's title." The department also revises the section to clarify that the rule prohibits the deceptive

use of the term "navigator" or to imply an unregistered individual or entity is a navigator for a health benefit exchange.

Section 19.4015: The department revises §19.4015 (relating to Administrative Violations) for clarity and consistency with other departmental regulations. The change revises the section to track other rule sections that address administrative violations of entities or individuals operating under an authorization issued by the department. This will ensure a standardized process for handling possible administrative violations.

The department makes the following nonsubstantive changes to the proposed rule text in addition to the changes made as a result of comments. These changes do not affect persons not previously on notice or raise new issues.

Necessary redesignation of provisions: The department redesignates subsections and paragraphs, and citations to subsections and paragraphs, where necessary to conform with the changes the department made in response to comments.

Section 19.4004: The department adopts a revised §19.4004 (relating to Registration Required). Changes to the text are made for clarity and consistency with agency style.

HOW THE SECTIONS WILL FUNCTION.

Section 19.4001. Purpose. This section states that the intent of 28 TAC Chapter 19, Subchapter W is to implement Insurance Code Chapter 4154.

Section 19.4002. Definitions. This section defines six terms used in Subchapter W: "enrollment assistance in a health benefit exchange," "governmental entity," "individual navigator," "navigator entity," "navigator services," and "nonpublic information." "Enrollment assistance in a health benefit exchange" refers to the provision of assistance to a consumer in applying for or enrolling in health coverage affordability programs through the health benefit exchange. "Governmental entity" refers to a board, commission, or department of Texas or a political subdivision of Texas, including a municipality, a county, or any kind of district, or an institution of higher education as defined by Education Code §61.003. "Individual navigator" and "navigator entity" refer to individuals and entities performing the activities and duties of a navigator as described by Insurance Code Chapter 4154, 42 USC §18031(i), or any regulation enacted under 42 USC §18031(i). "Navigator services" are activities and duties of a navigator as described by Insurance Code Chapter 4154, 42 USC §18031(i), or any regulation enacted under 42 USC §18031(i). The definition includes a nonexclusive list of possible services. The section also defines the term "nonpublic information," which refers to information protected under existing Texas statutes and rules: Insurance Code Chapter 601 or 602, and 28 TAC Chapter 22 (relating to Privacy).

Section 19.4003. Applicability. Subchapter W applies to any individual or entity providing navigator services in Texas on or after March 1, 2014. Section 19.4003 follows the language of Insurance Code §4154.004 in listing individuals and entities to whom Subchapter W does not apply: Texas-licensed life, accident, and health insurance agents, counselors, or companies. In addition, Subchapter W does not apply to an individual or entity providing navigator services under and in compliance with state or federal authority other than 42 USC §18031, such as those providing services under Texas' Health Information Counseling and Advocacy Program; nor does Subchapter W apply to a certified application counselor designated under 45 CFR §155.225 or the human resource personnel of a business using the Small

Business Health Options Program Marketplace to provide qualified health plans to employees of the business.

Section 19.4004. Registration Required. Section 19.4004 requires individuals who perform navigator services in Texas to register with the department before they provide enrollment assistance in a health benefit exchange. The section also requires entities that perform or oversee the provision of navigator services in Texas to register with the department before they provide or facilitate the provision of enrollment assistance in a health benefit exchange. Finally, the section requires any employee of a navigator entity who provides enrollment assistance in a health benefit exchange on behalf of the navigator entity in Texas to register with the department as an individual navigator.

Section 19.4005. Registration Eligibility. Section 19.4005 describes the criteria that entities and individuals must satisfy to register with the department.

To register as a navigator entity with the department, an entity must: establish procedures for handling nonpublic information; demonstrate financial responsibility, as required in 28 TAC §19.4010 (relating to Financial Responsibility); designate a responsible party who will submit to fingerprinting and a background check; provide the department with a list of individuals performing navigator services on behalf of the entity; and complete an application for registration. The individual who an entity designates as the responsible individual must be eligible for an authorization under the guidelines in 28 TAC §1.502 (relating to Licensing Persons with Criminal Backgrounds).

To register with the department as an individual navigator, an individual must be at least 18 years old, provide proof of U.S. citizenship or compliance with all federal employment laws, complete the applicable education and examination requirements of 28 TAC §19.4008 (relating to Navigator Education and Examination Requirements), submit to fingerprinting and a background check, identify the registered navigator entity with whom the individual will be associated or employed, and complete an application for registration. In addition, to register as an individual navigator, an individual must be eligible for an authorization under the guidelines in §1.502.

Section 19.4006. Application for Registration. Section 19.4006 lists the information an entity or individual must provide in an application for registration as a navigator entity or individual navigator. The application must be on a form specified by the department. The information should clearly identify the individual or entity and the responsible party the entity has designated, and obtain the individual's professional background information and criminal history. The entity or individual must also provide the date range for which they are seeking registration.

Section 19.4007. Renewal of Registration as a Navigator Entity or Individual Navigator. Section 19.4007 requires a navigator entity or individual navigator to apply for renewal of registration on a department-specified form no later than August 31 of each year. If a navigator entity or individual navigator does not timely file an application for renewal of registration, the entity's or individual's registration will expire the next September 30 following the effective date of the registration or latest renewal of registration.

The application for renewal of registration must contain the same information the application for registration requires.

Section 19.4008. Navigator Education and Examination Requirements. Section 19.4008 lists the education requirements

an individual must meet to register and to apply for renewal of registration as a navigator and the examination requirements that navigator education courses must meet.

To register, the individual must complete 40 hours of education, consisting of 20 hours attributed to completion of the training required for navigators under any regulation enacted under 42 USC §18031 and 20 hours attributed to completion of a preregistration education course that consists of department-certified Texas-specific training. An individual submitting an application for registration does not need to complete or provide proof of compliance with the training requirements for 20 hours of department-certified courses until May 1, 2014.

To apply for renewal of registration, an individual navigator must complete all continuing education requirements under any regulation enacted under 42 USC §18031 and complete at least two hours of department-certified continuing education courses on each of the following topics: Texas-specific Medicaid, applicable privacy requirements, and ethics.

The final examination given in navigator initial education courses must follow the requirements listed in §19.4008(d). Final examinations must consist of 50 multiple-choice questions that students must answer in no more than 60 minutes. Other examination requirements are designed to ensure that students are not exposed to examination questions before the examination, and that they do not receive answers or assistance during the examination. Examination questions must test students on the subjects specified in §19.4008(e), which also specifies what percentage of the questions must be devoted to each subject. Students must pass the examination by correctly answering at least 70 percent of the examination questions, but may retake the examination one time without retaking the course, provided the examination the student retakes has a different set of questions.

Section 19.4008(f) requires individual navigators to retain proof of course completion for four years from the date of completion and provide proof of completion to the department.

Section 19.4009. Course Providers. Section 19.4009 lists the sections of Title 28 that apply to course providers in preparing education courses and providing education courses to navigators.

Section 19.4010. Financial Responsibility. Section 19.4010 describes the evidence of financial responsibility that a navigator entity must provide to the department in order to register in Texas. The intent of this requirement is to protect individuals against wrongful acts, misrepresentations, errors, omissions, or negligence of the navigator entity, its employees, or navigators associated with or employed by the navigator entity.

Navigator entities must provide evidence of financial responsibility in one of four ways: 1) by obtaining a \$25,000 surety bond; 2) by obtaining a professional liability policy of at least \$100,000, with a deductible of not more than 10 percent; 3) by depositing with the comptroller \$25,000 in securities backed by the full faith and credit of the U.S. government; or 4) by providing evidence to the department showing that the navigator entity is a self-insured governmental entity.

Among other requirements, the surety bond must: be executed by the navigator entity, as principal, and a surety company authorized to do business in Texas as a surety; be payable to the department for the benefit of an insured; be separate from any other financial responsibility or obligation; and may not be used

to demonstrate professional responsibility for any other license, certification, or person.

If the navigator entity chooses to demonstrate financial responsibility by purchasing a professional liability policy, the navigator entity must either purchase it from an insurer authorized to engage in the business of insurance in Texas, or, if this is not possible, from an eligible surplus lines insurer under Insurance Code Chapter 981.

Section 19.4011. Navigator Identification. Section 19.4011 describes the identification that individual navigators must give consumers before providing enrollment assistance in a health benefit exchange. The identification must include a valid state-issued identification and a notice identifying the navigator entity the individual navigator is employed by or associated with.

Section 19.4012. Privacy of Nonpublic Information. Section 19.4012 lists existing Texas statutes and rules that a navigator entity or individual navigator must comply with, which are Insurance Code Chapters 601 and 602, and 28 TAC Chapter 22 (relating to Privacy).

Section 19.4013. Prohibitions. Section 19.4013 describes acts that an entity or individual may not engage in while providing navigator services. Navigator entities and individual navigators may not: engage in electioneering activities; charge consumers for providing information about health coverage affordability programs or health insurance concepts related to qualified health plans; sell or negotiate health insurance coverage; recommend a specific health benefit plan; or offer advice or advise consumers on which qualified health plan available through a health benefit exchange is preferable. Section 19.4013 does not prohibit a navigator entity or an individual navigator from providing public information on public benefits and health coverage, or other information and services consistent with the mission of a navigator.

Section 19.4014. Limits on Use of Term "Navigator". Consistent with §19.4003 (relating to Applicability), §19.4014 prohibits an entity or individual from using the term "navigator" in a deceptive manner as part of a name, website address, or title; or from implying that the entity or individual is a navigator for a health benefit exchange, unless that entity or individual is registered as required by 28 TAC Chapter 19, Subchapter W.

Section 19.4015. Administrative Violations. Section 19.4015 describes the actions that the commissioner or the commissioner's designee will take if the commissioner or designee believes that an entity or individual has violated or is violating the provisions of Insurance Code Chapter 4154 or 28 TAC Chapter 19, Subchapter W. The commissioner or designee may compel the production of documents. The commissioner or designee may begin contested case proceedings under Government Code Chapter 2001. If the commissioner or designee finds that a violation has occurred or is occurring, the commissioner or designee may impose the sanctions and penalties available under Insurance Code Chapters 82, 83, and 84 and may also terminate the entity's or individual's registration as a navigator.

Section 19.4016. Severability Clause. Section 19.4016 provides that if a court of competent jurisdiction finds any provision in 28 TAC Chapter 19, Subchapter W, or application of 28 TAC Chapter 19, Subchapter W, to any person or circumstance, to be invalid for any reason, the remaining provisions are severable.

Section 19.4017. Expiration. In accord with Insurance Code §4154.006, 28 TAC Chapter 19, Subchapter W, expires September 1, 2017.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Comment: A commenter submitted written comments and provided testimony at the public hearings held on December 20, 2013, and January 6, 2014. The commenter stated that there is a serious need for public hearing for this rule and that the department should optimize the opportunity for participation. For this reason, the commenter asked the department to postpone the public hearing until after the holidays and to extend the public comment deadline to January 31.

The commenter stated that most navigators are hard-working, honorable folks committed to helping fellow Texans find health insurance. The commenter stated that the purpose of SB 1795 was to ensure that Texans are able to find and apply for affordable health coverage under any federally run health benefit exchange while helping consumers in this state. The commenter agreed that helping consumers must be a priority for these rules and stated that the proposal includes commonly desired requirements to help protect consumers seeking and applying for affordable health coverage.

The commenter supported privacy protections. Further, the commenter stated that SB 1795 specifically forbids convicted felons from being navigators, making it appropriate that background checks be conducted on potential navigators. The commenter also stated that SB 1795 specifically and expressly prohibits electioneering. The commenter said these measures strike a balance between protecting consumers and increasing access to health insurance, and that the justification for them is self-evident, making any additional requirements political straw men.

The commenter stated that the department owes Texans an explanation when rules place a burden on navigators, represent an obstacle to or a reduction in people being able to help Texans find and apply for affordable health coverage, or prevent people from getting health insurance. The commenter asked the department to provide this explanation by demonstrating its compliance with the intent of the law and by showing that its actions are in the best interests of Texans who need health insurance for themselves and their children and loved ones in order to provide this assurance to Texans. The commenter stated hope that Texas' leadership can do better at keeping Texans healthy despite years of inaction in the face of life-threatening problems facing Texas' uninsured population. The commenter stated that SB 1795 intended to do this, and that the bill makes Texas better concerning the issue of its uninsured population-if implemented correctly and not distorted. The commenter said that the rules authorized under the bill should help improve the lives of the uninsured. The commenter also noted that if the proposed rules create an obstacle or make it harder to ensure that Texans are able to find and apply for affordable health coverage, the department should show that the obstacle created is not about consumer protection. The commenter said that the rules must not be seen as products of political pressure to impose needless, expensive, burdensome, and bureaucratic regulations that would deny reliable healthcare to Texans; and the commenter expressed regret that the issue has been badly politicized. The commenter said that leaders who attack the federal health insurance exchange refuse to create a state exchange that might address their criticism, and opined that now the people who are trying to help their fellow Texans navigate the health exchange are under fire. The commenter

questioned whether this is because there is a real problem that needs to be addressed or because leaders wish to fight a political battle designed to make it harder for Texans to find health insurance. The commenter stated that the context in which these rules are being drafted, and the identity of those who will suffer from any unfairness incorporated into these rules, is important. The commenter opined that it is those Texans who wish to escape the fear that illness or injury might bankrupt their families who would suffer, not the navigators. The commenter stated that people have reason to be skeptical about the department's rule-making process, and that the best and only way to address that skepticism is for the department to plainly and transparently justify the provisions that the department ultimately adopts.

The commenter asked the department to justify the additional training requirements in the proposed rules. The commenter asked why existing training requirements need to be tripled, as current federal rules require 20 to 30 hours of training. The commenter stated that the proposed rules would add 40 more hours of training. The commenter asserted that increasing requirements would decrease the amount of help available to Texans who need health insurance. The commenter stated that the department's estimates show that this training could cost \$200 to \$800 per navigator, which the commenter asserts is a significant, and in some cases decisive, burden on individuals and organizations that are legally forbidden from recouping those costs from the people they are trying to help. The commenter asked the basis of the target of 40 additional hours and questioned what navigators need to know that the federal requirements aren't allowing them to learn. The commenter asked for a justification of the cost of complying with these requirements and notes that other similar assistance programs have managed to train and update their community partners at no charge to the participating groups. The commenter questioned why navigators are being assessed fees when they can't collect them themselves. The commenter stated that the training requirement is a remarkable barrier.

The commenter asked how the department justifies deviations from the fiscal note to Senate Bill 1795 and stated that the fiscal note, produced seven months ago with the department's input, clearly stated the assumption that any costs associated with the implementation of this bill would be absorbed within existing staff and resources. The commenter stated that nothing has changed except for a rule that charges a fee to people that cannot charge a fee themselves. The commenter asked how the department justifies cumbersome financial reporting requirements.

The commenter stated that everyone believes navigators need to be accountable and that the author passed SB 1795 to ensure that the state could protect Texans from bad or negligent actors. The commenter stated that some of the reporting requirements make little sense in the context of nonprofit agencies that will be providing services. The commenter said that some requirements seem scaled for insurance companies, not community-based organizations, and create a barrier to people being able to get help in seeking access to health insurance.

The commenter stated that it should be obvious that Texans, whether technically navigators or not, can help friends and neighbors understand and compare features of health plans without recommending that a consumer buy a specific plan. The commenter said that people should have the ability to walk into their state senator's office and get help from a staff member comparing and understanding options, and navigators need to be able to help consumers compare and understand insurance

options without recommending which plan to purchase. The commenter asked the department to justify including language in the proposed rules that was intentionally kept out of the bill authorizing these regulations. The commenter said that legislators intentionally rejected proposals to prohibit navigators from providing "advice regarding substantive benefits or comparative benefits of different health benefit plans."

The commenter stated that the department needs to justify its timetable because many Texans face another critical federal deadline for signing up for health insurance. The commenter said that if the department maintains its stated intent of requiring compliance with its rules by March 1, navigators will have only one month to comply. The commenter stated that this timeline could force navigators, most of whom are working in good faith to help their fellow Texans, to shut down their services just as open enrollment is closing and their help is most needed. The commenter said fairness requires that the department delay implementation of the rule until after the enrollment period closes. The commenter opined that the public comment process will result in the submission of many concerns, each meriting thoughtful answers and serious consideration. The commenter said that the department owes it to Texans to follow the intent of SB 1795 and strike an appropriate balance between protecting consumers and keeping Texans healthy. The commenter stated that the department has a responsibility and an opportunity to remove politics from this issue by reworking the rules and keeping uninsured Texans from suffering under them. The commenter stated appreciation for the scheduling of a second hearing on the rules, as the commenter had requested.

The commenter asked for answers to several questions:

-How the department arrived at a 40-hour training requirement in addition to the 20 to 30 federally required training hours.

-How the department arrived at the 13-13-14 hours of training in the areas of Texas Medicaid, privacy, and ethics, respectively.

-Why navigators will have to pay registration fees, as well as significant costs associated with additional training, in light of the fact that navigators cannot charge a fee for their service, and the fact that the fiscal note for Senate Bill 1795, based on information provided by TDI, assumes any costs associated with implementation of the bill would be absorbed by the existing staff and resources.

-How the department arrived at the proposed options for proving financial responsibility, which include surety bonds.

-Department provide a detailed timeline showing each step that a navigator organization and individual navigators must accomplish to come into compliance with the proposed rule, and a time frame in which each step can reasonably be completed.

-How extending the registration requirements to almost anyone providing enrollment assistance for Texas consumers, or how restricting the use of the term "navigator" outside of the federally operated insurance exchange, protects consumers.

Agency Response: The department agrees, in part, with the commenter's comments. The department has made some revisions to the proposed rule text to address some of the comments made by the commenter, and to address similar concerns voiced by other commenters.

On December 3, 2013, the department posted notice of the proposed rule on its website and emailed the notice of the proposal to known stakeholders. The *Texas Register* published the pro-

posal on December 6, 2013. The proposal included a notice of hearing, which the department held on December 20, 2013. The department held an additional hearing after the New Year's Day holiday on January 6, 2014, for which it provided notice in the December 20, 2013, issue of the *Texas Register* (38 TexReg 9403). In addition to the opportunity to provide oral and written comments at the two public hearings, the public had the opportunity to provide written comments until no later than 5:00 p.m. on January 6, 2014, as specified in the proposal. The department received 55 sets of written comments from commenters, and 33 sets of commenters testified at the public hearings. The additional opportunity to provide comment at the second, post-holiday public hearing, in addition to the early notice of the proposal on the department's website and through email notification, improved the opportunity for comment such that an extension to January 31 should not be necessary.

The department agrees that many navigators have been and will likely continue to work hard to provide quality navigator services in a manner consistent with the intent of SB 1795. The department also agrees that consumer assistance and consumer protection is a critical aspect of the rules. The department appreciates the supportive comment concerning the rule's consumer protection requirements.

The department agrees that privacy protections and laws are important, and appreciates the support for its requirements concerning background checks in the proposal. Insurance Code §4154.051(c)(3) specifically requires the department's rules to provide that a navigator may not have been convicted of a felony. Insurance Code §4154.101(a)(6) prohibits a navigator who is not licensed as an agent under Insurance Code Chapter 4054 from engaging in any electioneering activities, and §19.4013(a)(1) reiterates this prohibition for clarity.

The department agrees that it has a duty under Government Code Chapter 2001 to provide explanations related to its rule. Government Code §2001.033(a) establishes specific requirements for a state agency to address in adopting a rule. With respect to an agency's compliance with the intent of the law, subsection (a)(1)(B) requires the adoption order to include a summary of the factual basis for the rule as adopted that demonstrates a rational connection between the factual basis for the rule and the rule as adopted. Further, subsection (a)(1)(C) requires the inclusion of a concise restatement of the particular statutory provisions under which the rule is adopted and of how the agency interprets the provisions as authorizing or requiring the rule. The department provides this summary in this adoption order under the heading "statutory authority." In addition to this explanation, the department provided notice of cost information and an economic impact statement and regulatory flexibility analysis in its proposal at 38 TexReg 8776 through 8778, and the proposal further included the department's explanation of the legal and factual basis for its proposed rule at 38 TexReg 8769 through 8776 and 8779 through 8780. The department incorporates by reference each of these explanations into this response.

The department respectfully disagrees that these adopted rules, designed to ensure the qualifications of navigators, will prevent people from obtaining health insurance. The department has no reason to believe that any navigators will not qualify to register under these rules and be available to assist individuals in seeking and applying for health insurance. Instead, the rules will only prevent inadequately qualified persons from offering navigator

services. As such, those who wish to seek and apply for health insurance coverage will not suffer as a result of the rules.

The proposed rules would apply to more than just recipients of federal grants under the ACA. This applicability is consistent with the definition for "navigator" contained in SB 1795. SB 1795 says "navigator means an individual or entity performing the activities and duties of a navigator as described by 42 USC §18031." Application of the rules consistent with the SB 1795 definition of "navigator" means the adopted registration process will apply not only to those who perform the activities and duties of a navigator as described by 42 USC §18031, it will also apply to those who did not apply for, or who applied for but did not receive, a federal navigator grant. One such organization has contacted the department several times since passage of the ACA, asking how it could receive authorization to act as a navigator.

The availability of more than just grant-recipient navigators in Texas will broaden the pool of navigators able to help Texans find and apply for health coverage under the federal exchange, which is consistent with the purpose of SB 1795 as stated in Insurance Code Chapter 4154: "[T]he purpose of this chapter is to provide a state solution to ensure that Texans are able to find and apply for affordable health coverage under any federally run health benefit exchange, while helping consumers in this state." The department determined that the availability of more navigators in Texas would increase the likelihood that members of the uninsured population in this state would have assistance in finding health coverage through the exchange.

Application of the rules consistent with the SB 1795 definition of "navigator" also means that the standards adopted under the rules will apply equally to navigators that are grant recipients, and those that are not. For example, navigators with the organization that has contacted the department will be required to complete the same amount of federal and Texas-specific training as navigators with any of the federal grant recipients in Texas. This will create a level playing field for all navigators in the state, and will help insure that consumers receive enrollment assistance in a health benefit exchange from a qualified navigator.

The department disagrees that there is a presumption that the basic intent of the law is not being met and believes that this response demonstrates how the department's rules implement SB 1795 by providing the legal and factual basis for the rules.

The department agrees that SB 1795 represents an opportunity for Texas to improve access to health insurance and improve the lives of the insured by creating and authorizing standards for the regulation of navigators. The department disagrees that these rules distort SB 1795 and, as addressed earlier in this response, has provided the legal and factual explanation of the basis for the rules, including the basis of consumer protection. As stated in §19.4001, the purpose of these rules is to implement Insurance Code Chapter 4154, which intended to provide a state solution to help Texas consumers and ensure their ability to find and apply for affordable health coverage under the federal health benefit exchange. The department agrees that unrelated political considerations would be an inappropriate basis for the rule.

As stated in the department's proposal, the training standards stated in 45 CFR §155.215 do not address Texas-specific Medicaid, privacy beyond the standards under 45 CFR §155.260, or navigator ethics. The listed contents of the current federal training modules do not include such necessary topics such as: Texas Medicaid eligibility, enrollment processes, or benefits; Texas statutes and rules protecting nonpublic information;

insurance fraud; ethical behavior of navigators, or the difference between ethics and laws; and the duty of navigator to a consumer. The standards set by federal navigator regulations under 42 USC §18031 do not require navigators to receive education related to Texas Medicaid, Texas statutes and rules protecting nonpublic information, or ethics. Requiring a certain number of hours of training as a prerequisite to a qualification is consistent with the requirements for navigators in other states. It also reflects the current practice of several of the federal navigator grant recipients in Texas that provided input on the proposed rules. Many of these navigator entities that are grant recipients only employ individuals who have additional training or experience, or they require that individuals they hire as navigators receive training beyond what the federal regulations require. As adopted, the rules require five hours on Texas-specific Medicaid and Children's Health Insurance Program provisions, five hours on applicable privacy requirements, five hours on ethics, two hours on basic insurance terminology and how insurance works, two hours of exam preparation, and one hour allotted to complete a final examination.

The department believes that these requirements will ensure that navigators are qualified and provides navigators with enough flexibility to choose the course they take to meet the requirements. The department believes that the requirements ensure that the pool of qualified navigators is not increased by failing to address important areas of training that could detrimentally affect the services a consumer receives. Each of these considerations justifies the cost of complying with the training requirements. The department further notes that it lacks funding for the provision of navigator training. The department itself will not assess training fees, but does recognize that there are costs associated with obtaining the training; however, the department believes that the importance of this training, as explained in this response, outweighs the cost of the training.

The department did not address costs for training in a fiscal note for SB 1795 several reasons. First, a fiscal note on a bill only addresses costs to the agency to implement a bill. The department generally does not pay compliance costs for entities or individuals who seek an authorization issued by the department, so the department would not include those costs in a fiscal note. In addition, there were no federal navigator regulations in place, and no department determination that the federal regulations were insufficient; it was not clear what, if any, compliance requirements would be adopted under SB 1795. The department agrees that navigators should be accountable. The department has considered the purpose of SB 1795, which is to provide a state solution to help and protect Texas consumers by ensuring the security of their private information, and ensuring that they are able to find and apply for affordable health coverage under the federally run health benefit exchange with the assistance of qualified navigators. The department has determined that it would not be consistent with the consumer protection purposes of the statute to waive the requirements of the proposed sections for selected categories of navigators. The department believes that an individual seeking assistance from a navigator is entitled to the same level of consumer protection regardless of who provides the services.

The comment expressing concern that the proposed rule would prevent a navigator from helping a consumer understand and compare benefits to make an informed insurance choice appears to address proposed §19.4014(a)(5). As proposed, §19.4014(a)(5) would prohibit a navigator from "provid[ing] advice regarding substantive benefits or comparative benefits

of different health benefit plans." The intent of this provision was not to prevent navigators from discussing the coverage available under plans, but rather to prohibit navigators from making blanket statements regarding which plan is more beneficial. The choice of which plan is better should be made by the consumer, not the navigator. This prohibition is based on Insurance Code §4154.101(a)(4), which prohibits a navigator who is not licensed under Insurance Code Chapter 4054 (relating to Life, Accident, and Health Insurance Agents), from offering advice or advising consumers on which qualified health plan available through the federal health benefit exchange is preferable.

Based on this comment and similar comments or statements made by other commenters, it is apparent that proposed §19.4014(a)(5) needs to be revised for clarity. So as adopted, the department has revised this provision to track the language of Insurance Code §4154.101(a)(4). In addition, the adopted text follows this revised provision with a subsection that tracks Insurance Code §4154.101(b), which says a navigator is not prohibited under Insurance Code §4154.101 from "providing information and services consistent with the mission of a navigator."

The commenter's concerns regarding the scope of the proposed rule and to whom it would apply to relates directly to the terms "individual navigator", "navigator entity", and "navigator services." As proposed, the terms "individual navigator" and "navigator entity" were based on the statutory definition of "navigator" in Insurance Code §4154.002(3), which defines "navigator" as "an individual or entity performing the activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." Rather than using the words "activities and duties of a navigator" in the definitions for "individual navigator" and "navigator entity," the department used the defined term "navigator services." The defined term "navigator services" was intended to capture "activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." However, some commenters did not understand that Insurance Code §4154.002(3) defines the term "navigator" by referencing the "activities and duties of a navigator," and use of the department term intended to capture that phrase resulted in further confusion.

To avoid confusion regarding the statutory basis for the definition of "individual navigator" and "navigator entity," the department has revised the definitions of the terms to remove the defined term "navigator services" and incorporates the statutory phrase "activities and duties of a navigator." In addition, the department has revised the definitions of these terms to include a citation to the specific subsection in 42 USC §18031, which sets out the duties of a navigator.

To ensure clarity regarding the statutory basis for the term "navigator services," the department has revised that term to use the statutory phrase "activities and duties of a navigator." The department has also removed a reference to the adopted rules, as all activities and duties described in them are based on statutory activities and duties; added a citation to the specific subsection in 42 USC §18031 that sets out duties of a navigator; added a citation to Insurance Code §4154.051(a), which is the source of the duties listed in the definition; and revised the list of duties in the definition to include only those most relevant to the need for regulation of navigators. Applicability of the rules to specific individuals and the need for the department to take action under the rules depends on the facts of the situation. This is the case for anyone regulated by the department, not just navigators. In most

instances it may be clear if someone is performing an act regulated by the department, but at other times it may not be apparent if someone is acting as an agent or someone is performing the business of insurance. In those instances, the department must look closely at the facts of the case, and may even need to proceed to a contested case hearing to conclusively determine if an act is regulated by the department.

In adopted §19.4003(f), the department has clarified the rule's applicability to state that it does not apply to "an individual who only provides navigator services to a person or persons related to the individual within the third degree by consanguinity or within the second degree by affinity, as determined under Government Code Chapter 573, Subchapter B."

There may not be a role for the department in the interaction of an individual with the individual's neighbor. If the individual is not purporting to be a navigator and is not taking so many acts that the individual's neighbor believes the individual is a navigator or is relying on the qualifications of the individual as a navigator, the rules may not be applicable to the individual. However, in other instances, someone might deceptively pose as a navigator in an attempt to access a neighbor's private information; or someone might honestly want to act as a navigator to assist neighbors, but not actually understand how to provide such assistance. In those situations, the rules may be applicable and, if the department is made aware of this activity, it may be necessary for the department to act to ensure consumer protection.

The effective date of the rule will be February 10, 2014. This provides three weeks before the date navigators need to be registered. However, the department provided notice of the commissioner's adoption of these rules on the department's website on January 21, 2014, and nothing prevents a navigator from submitting an application prior to the effective date of the rule. So navigators have an additional 20 days to prepare for compliance with the registration requirement before the effective date. Additionally, the adopted rules do not require that a navigator complete and provide proof of completion of the department-certified state-specific training, as required by the adopted rules, until May 1, 2014. Completing the state-specific training will be the most time-consuming element of the registration process; but under adopted §19.4008(g), navigators do not need to complete the training or provide proof that they've completed the training until May 1, which is after the end of the open enrollment period.

The department believes the need for the consumer protections included in the adopted rule warrants the March 1 applicability date, and that allowing a two-month delay in showing proof of state-specific training provides sufficient time for navigators to register with the department, obtain the necessary training, and continue to provide assistance to consumers.

The department agrees with the commenter that comments deserve thoughtful responses and consideration, and the department has endeavored to provide responses demonstrating that consideration in this adoption order. As previously stated, the department has provided the legal and factual explanation of the basis for the rules, including the basis of consumer protection. As stated in §19.4001, the purpose of these rules is to implement Insurance Code Chapter 4154, intended to provide a state solution to help Texas consumers and ensure their ability to find and apply for affordable health coverage under the federal health benefit exchange. The department also agrees that unrelated political considerations would be an inappropriate basis for the rules. The department believes that the proposal and adoption order for the rules reflect these intentions, as explained in the

department's legal and factual explanation of the basis for the rules. The department appreciates the supportive comment on the public input process and the scheduling of a second public hearing date.

The commenter requested responses to specific questions related to: the number of training hours; the content of the training; the registration fee; the financial responsibility requirement; compliance requirement timelines and the scope of the rules. Although many of these concerns have been previously addressed in this response, and in responses to similar comments, and many of those responses are incorporated here or by reference, the following is a consolidated summary of those responses:

-Number of training hours:

As adopted, the rules do not require 40 hours of additional training. Instead, the adopted rules require 20 hours of state-specific training with the specific requirements being contained in adopted §19.4008. The department determined that additional training beyond the federally-required training is necessary based on input received during the department's review of the federal regulations and the rulemaking process. Several navigator entities only employ individuals who have additional training or experience, or they require that individuals they hire as navigators receive training beyond what the federal regulations require. To ensure the qualification of all navigators in Texas, the department incorporated requirements for additional training into the adopted rules.

-Content of additional training:

The rules as adopted do not require 13-13-14 hours of training in the areas of Texas Medicaid, privacy, and ethics, respectively. Instead, the adopted rules require additional training in the following subject areas: five hours on Texas-specific Medicaid and Children's Health Insurance Program provisions, five hours on applicable privacy requirements, five hours on ethics, two hours on basic insurance terminology and how insurance works, two hours of exam preparation, and one hour to complete a final examination.

-Registration fee:

In response to this comment, and similar comments from others, expressing concerns regarding the registration fee, the department agrees to withdraw the proposed section that would establish registration and renewal fees and not include it in the adopted rule.

-Financial responsibility:

The intent of the financial responsibility requirement is to protect individuals against wrongful acts, misrepresentations, errors, omissions, or negligence of the navigator entity, its employees, or navigators associated or employed with the navigator entity. This is a necessary accountability standard for state regulation of navigators that is lacking in federal standards. The department acknowledges that demonstrating compliance with the financial responsibility requirement may incur a cost for navigator entities. In response to this and other similar comments regarding the potential costs associated with the requirement, the department has reduced the surety bond amount included in §19.4010(a)(1) to \$25,000, which would reduce the cost of compliance for any navigator entity that selected that option for demonstrating financial responsibility. The department also revised §19.4010 to clarify the applicability of the section, and to provide an alternative method of demonstrating financial responsibility. Governmental entities that become navigator entities are

able to satisfy the financial responsibility standards in the rule by providing evidence that the navigator entity is a self-insured governmental entity.

Guidance regarding the timing and steps necessary for individual navigators and navigator entities to complete:

Although all requirements and deadlines are contained within the proposed rule, the department will post "frequently asked questions" on its website to assist applicants through the process. Specifically an individual navigator must register with the department by March 1, and complete and submit all required training to the department by May 1. Registration is accomplished by submitting a completed registration form with fingerprint information to the department, and passing a criminal background check. Processing of an application for registration can be accomplished in as few as seven business days from the date received; however, total processing time will depend on the content, accuracy, and completeness of the application submitted. Further, additional processing time will apply based on application screening questions or the content of the criminal history.

Navigator entities must register with the department by March 1, 2014. In order to register with the department a navigator entity must:

- (1) establish procedures for the handling of nonpublic information;
- (2) demonstrate financial responsibility as required under §19.4010;
- (3) provide to the department the procedures and evidence of financial responsibility required by §19.4005(a);
- (4) designate an officer, manager, or other individual in a leadership position in the entity to act as a responsible party on behalf of the entity and submit to fingerprinting and a background check;
- (5) provide a list of individuals performing navigator services on behalf of or under the supervision of the entity; and
- (6) complete and provide to the department an application for registration.

A navigator entity or individual navigator must apply for renewal of registration on a department-specified form no later than August 31 of each year.

The commenter expressed concern that it was unclear how the scope of the rule protected consumers.

Insurance Code Chapter 4154 requires the department to develop standards and qualifications for entities and individuals performing the activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section, following the commissioner's finding of insufficiencies in federal regulations and attempts to resolve those insufficiencies through work with the HHS in accord with Insurance Code §4154.051(b). In the adopted rules, the department balances the needs of consumers with the burden of regulation of navigators in its preparation of the standards required by Insurance Code §4154.051(b).

As previously noted, the proposed rules would apply to more than just recipients of federal grants for navigators under the ACA. This applicability, consistent with the definition for "navigator" contained in SB 1795 means the adopted registration process will apply to those who want to perform the activities and duties of a navigator as described by 42 USC §18031 but who did not apply for, or applied for but did not receive, a fed-

eral navigator grant. The availability of more than just grant-recipient navigators in Texas will broaden the pool of navigators able to help Texans find and apply for health coverage under the exchange and increase the likelihood that members of the uninsured population in this state would have assistance in finding health through the exchange. This also means that the standards adopted under the rules will apply equally to grant recipient and nongrant recipient navigators. This will create a level playing field for all navigators in the state and help insure that consumers receive enrollment assistance in a health benefit exchange from a qualified navigator.

In addition, the department determined that, while there is a broad range of activities and duties a navigator as defined by SB 1795 may perform, it is the act of assisting consumers with enrollment through the health benefit exchange that presents the most potential for consumer harm if the navigator is either unqualified or acting with malicious intent. So the department has focused the standards adopted under the rules on entities and individuals performing that function and adopted minimal provisions, which were included in Chapter 4154, for entities and individuals performing other activities and duties of a navigator as described by 42 USC §18031 and the regulations enacted under it. To implement the standards in this way, the department developed the term "enrollment activities in a health benefit exchange."

The department adopts a revised definition for the term "enrollment assistance in a health benefit exchange" by replacing the phrase "completing the application for health coverage affordability programs" with the words "applying for or enrolling in health coverage affordability programs."

The purpose of this change is to clarify that the definition contemplates assistance in the specific act of applying for health coverage affordability programs available through a health benefit exchange, not merely assistance in completing an application form when the form is used for reasons other than applying for health coverage in the exchange. To further clarify this definition, the department has also incorporated in the definition additional examples of what would constitute providing assistance in the act of applying for health coverage affordability programs available through a health benefit exchange

Comment: A commenter submitted a written comment. The commenter said he cannot find a definition "of navigator" in the proposed rule or the federal or state statutes or rules. The commenter said the closest anyone comes to defining "navigator" is "someone who does what navigators do." The commenter said this is so broad that if he helps his neighbor wade through the Exchange website he might have to comply with the rule registration requirements. The commenter said this is getting close to restricting his speech.

Agency Response: Insurance Code §4154.002 defines "navigator" as "an individual or entity performing the activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." The department has incorporated this definition into the adopted rule with the defined terms "individual navigator" and "navigator entity," which track the statutory definition.

The department agrees that the statutory definition for "navigator" is broad in that it encapsulates anyone providing navigator activities. However, the department has attempted to narrow the scope by which it will apply this broad statutory definition with the adopted rules. In the adopted definition for "navigator activities" the department has referenced specific duties listed in Insurance

Code §4154.051(a) that warrant some oversight by rules. Additionally, the department has identified the specific navigator action of providing enrollment assistance in a health benefit exchange as warranting higher regulation under the rules, because a person performing that act would have access to a consumer's nonpublic information.

Applicability of the rules to specific individuals and the need for the department to take action under the rules depends on the facts of the situation. This is the case for anyone regulated by the department, not just navigators. In most instances it may be clear that someone is performing an act regulated by the department, but at other times it may not be apparent if someone is acting as an agent or someone is performing the business of insurance. In those instances, the department must look closely at the facts of the case, and may even need to proceed to a contested case hearing to conclusively determine if an act is regulated by the department.

For example, there may not be a role for the department in the interaction of the commenter with the commenter's neighbor. If the commenter is not purporting to be a navigator and the commenter is not taking so many acts that the commenter's neighbor believes the commenter is a navigator, or is relying on the qualifications of the commenter as a navigator, the rules may not be applicable to the commenter. However, in other instances someone might deceptively pose as a navigator in an attempt to access a neighbor's private information; or someone may honestly want to act as a navigator to assist neighbors, but not actually understand how to provide such assistance. In those situations, the rules may be applicable and may be necessary to ensure consumer protection.

Comment: A commenter submitted both written comments and testimony. The commenter said the department is outside its statutory authority under Insurance Code §4154.051(e) by imposing licensing procedures on navigators because it is contrary to SB 1795, which only applies to registration not licensure, and the functions of a navigator are already defined in the federal law and regulations. The commenter stated that it is unnecessary for the department to redefine by rule who is a navigator because Insurance Code §4154.002(3) adopts the federal definition under 42 USC §18031 or any regulation enacted under that section.

The commenter suggested that the cost of registration should be nominal (\$10) and there should be no application fee because the Fiscal Note issued by the Legislative Budget Board on May 22, 2013, states "Based on information provided by the department, it is assumed that any costs associated with the implementation of this bill would be absorbed within existing staff and resources."

The commenter said it was unnecessary for the department to adopt rules to protect the private financial and personally identifying information of consumers because consumer protection laws at the state and federal level, including Penal Code §31.17 and §32.51 would apply, and both contain penalties.

The commenter stated that the department should pay for any required training and registration; allow for online instruction and testing, to avoid travel time and expenditures; and collaborate with the Texas Department of State Health Services (DSHS) to provide the training instead of outsourcing the training, which would require navigator grantees or individual navigators to potentially pay \$1,000 out of their own pockets-and that would be unconscionable.

The commenter said that, for consumer protection, the department website should provide a list of designated navigators where citizens can verify legitimate navigators, and a hotline should be available to provide the same information. The commenter also said the department should provide a link on its website and establish a contact person to receive and process complaints against navigators.

The commenter contended that the department should have held an official public hearing about any relevant and material deficiencies in the federal rules so that the Legislature and public could have been made aware of the deficiencies prior to the department making the threshold determination that there are deficiencies. The commenter suggests such a hearing be held prior to adopting new rules affecting navigators and the U.S. Center for Medicare Services (CMS) should make a presentation regarding promulgation of the federal rules.

The commenter suggested the adoption date for state-imposed requirements be after March 2014, and before the next enrollment period begins. The commenter requests that the department grant provisional approval to current navigators so that they may continue to help citizens enroll in affordable healthcare plans during this rulemaking process.

The commenter suggests that the department establish a verification and complaint process regarding navigators to protect consumers while avoiding undue delay of citizens' enrolling in an affordable healthcare plan.

The commenter said the proposed rules are creating confusion for navigators and healthcare organizations that serve indigent citizens, and the effort to protect uninsured citizens is creating roadblocks for millions of people who need health insurance. The commenter agreed that the department has a role in protecting consumers from unscrupulous or fraudulent actions by certified CMS navigators or other persons, but claimed the rules go beyond that goal and are too broad and vague to give notice of who is being regulated or how to verify with the department who is authorized by CMS or registered with the department to assist with enrollment. The commenter suggested that the department clarify that its mission and scope of authority apply to a small set of registration applicants, such as grant-funded organizational navigators, their sub-grantees, and a small number of individuals who report to them and who are certified by CMS to assist the public with enrollment under the Affordable Care Act. The commenter said the rules could adversely affect persons and groups that do not aim to serve as certified navigators or CMS-certified navigators, such as hospitals, pharmacies, faith-based organizations, social workers, and others who come into direct contact with some of the state's six million uninsured persons. The commenter is concerned that the rules could negatively impact nonnavigator organizations in Bexar County, such as the University Health System, Christus Santa Rosa, and Methodist Healthcare Ministries, as well as nonprofit 501(c)(3) or 501(c)(4) social service entities. The commenter believes the rules could cause unnecessary and expensive litigation, and that the costs will be paid by taxpayers.

The commenter claimed that if the rules are adopted, the department will be engaged in "mission creep" because Texas law authorizes the department to register navigators, not license them. The commenter claimed that the rules impose licensure requirements on ACA navigators as if they are hired by insurance companies because the requirements are modeled on those for insurance loss adjusters; but comparisons made between licensed insurance adjusters and ACA navigators are misdirected.

The commenter stated that an adjuster licensed by the department works for the commercial benefit of the insurer whose job is to minimize the loss ultimately paid by the insurer, and their duties stem from their role as a servant of the insurer that has an insured customer who has suffered a covered loss. The commenter stated that the ACA navigators must remain neutral when assisting citizens who seek to obtain health coverage through the ACA marketplace, and by providing this service to the public the navigators provide a public service and generate no financial gain for the navigator organizations or for themselves. The commenter thinks a more appropriate model for the department registration procedures would be the Medicaid counselors who serve the DSHS.

The commenter stated that the department has a licensing procedure in place for insurance loss adjusters and currently contracts with a vendor to conduct the training and testing for them; but this is not a valid basis for imposing similar requirements on ACA navigators through the registration process, and the registration rules should not be allowed to serve as a vehicle for a vendor to profit from navigators providing grant-funded services for a public purpose.

Agency Response: The department does not agree that the rule proposes navigator licensure rather than registration. The department believes the rule, which is necessary to establish a state registration for navigators, ensures that individuals and entities performing the activities and duties of navigators satisfy minimum standards set forth in Insurance Code Chapter 4154 (relating to Navigators for Health Benefit Exchanges). This chapter requires that navigators in Texas have not had a professional license suspended or revoked, not been the subject of other disciplinary action by a state or federal financial or insurance regulator, and not been convicted of a felony. The state registration for navigators is also necessary to enable the department to collect information necessary to compile a list of all registered navigators providing assistance in Texas, including an individual navigator's employer or organization, as required by Insurance Code §4154.051(d).

The department disagrees that these rules distort SB 1795 or exceed the authority granted in that bill and, as addressed earlier in this document, has provided the legal and factual explanation of the basis for the rules, including the basis of consumer protection. As stated in §19.4001, the purpose of these rules is to implement Insurance Code Chapter 4154, which is intended to provide a state solution to help Texas consumers and ensure their ability to find and apply for affordable health coverage under the federal health benefit exchange.

In response to this comment, and similar comments expressing concerns regarding the registration fee, the department agrees to withdraw the proposed section that would establish registration and renewal fees and not include it in the adopted rule.

The department does not agree that consumer information is adequately protected in the navigator context. The department determined that additional requirements were necessary based on a thorough review of standards in federal regulations, as required by SB 1795; input from stakeholders in Texas; and conferences with HHS staff. The department agrees that state and federal privacy laws would apply to navigators; however, the department also determined that additional training on those laws is necessary to protect Texas consumers.

As stated in the department's proposal, the training standards stated in 45 CFR §155.215 do not address Texas-specific Med-

icaid, privacy beyond the standards under 45 CFR §155.260, or navigator ethics. The contents of the federal training modules do not include: Texas Medicaid eligibility, enrollment processes, or benefits; Texas statutes and rules protecting nonpublic information; insurance fraud; ethical behavior of navigators, or the difference between ethics and laws; and the duty of a navigator to a consumer. And the standards set by federal navigator regulations under 42 USC §18031 do not require navigators to receive education related to Texas Medicaid, Texas statutes and rules protecting nonpublic information, or ethics. Requiring a certain number of hours of training as a prerequisite to a qualification is consistent with the requirements for navigators in other states. It also reflects the current practice of several of the federal navigator grant recipients in Texas that the department spoke with in preparing the proposed rules. Many of these navigator grant-recipient entities only employ or associate with individuals who have additional training or experience, or they require that individuals they hire as navigators receive training beyond what the federal regulations require. As adopted, the rules require five hours of training on Texas-specific Medicaid provisions, five hours of training on applicable privacy requirements, five hours of training on ethics, two hours of review of topics addressed by federal training; two hours of exam preparation, and one hour for completion of a final examination. The department believes that these requirements will ensure that navigators are qualified, and that it provides navigators with enough flexibility to choose the course they take to meet the requirements. Further, the department believes the requirements ensure that the pool of qualified navigators, while also addressing important areas of training. Each of these considerations justifies the cost of complying with the training requirements.

The department further notes that it lacks funds to provide navigator training. The department itself is not assessing training fees, but does recognize that there are costs associated with obtaining the training. However, the department believes that the importance of this training, as explained in this response, outweighs the fact of the cost of the training.

As adopted, the rules do not require 40 hours of additional state-specific training. Instead, the adopted rules attribute 20 hours of federal education to the initial training requirement, and require 20 hours of state-specific training, with the specific requirements of the state-specific training being contained in adopted §19.4008, for a total of 40 hours of training. Based on input received during the department's review of the federal regulations and the rulemaking process, the department determined that additional training was necessary. Several navigator entities in Texas have independently decided that federal training requirements are insufficient, and they either seek out individuals with specialized experience to serve as navigators or provide their employees with extra training beyond what is required by the federal government. To ensure the qualifications of all navigators in Texas are sufficient, the department incorporated requirements for additional training into the adopted rules.

Cost estimates in the rule proposal for navigator training varied between \$200 and \$800 dollars and was based on a cost range of \$5 to \$20 dollars per hour for 40 hours of state-specific training. In response to this commenter's concerns about training costs, and other similar comments from other commenters about training costs and the amount of training required, the department has revised this requirement in the adopted rules from what was proposed. As adopted, the rules require 20 hours of state-specific training, which reduces the potential cost range for training to \$100 to \$400 dollars.

In addition, navigator entities that chose to develop their own training courses and have them certified by the department can reduce their cost more. Under 28 TAC Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Education Programs, and Certification Courses), the cost to become an approved course provider is \$50, and there is no cost associated with the certification of a preregistration course except for the cost to develop the materials. Based on this, the costs to a navigator entity to provide initial training for individual navigators employed by or associated with it could be as low as \$50, plus the cost of training materials and supplies, regardless of the number of individual navigators employed by or associated with the navigator entity.

The department disagrees with the statement suggesting that the department will contract with a vendor to conduct the training and examination required for individual navigator registration. The rules do not provide for this, and as indicated earlier in this response, navigator entities have the option of becoming approved course providers, which would allow them to arrange for the training for their navigator staff and representatives.

The department did not have a hearing regarding the potential insufficiencies in the federal regulations as it was not required by Insurance Code Chapter 4154. Insurance Code §4154.051(a) requires the commissioner to determine whether the standards and qualifications for navigators provided by 42 USC §18031, and any regulations enacted under that section, are sufficient to ensure that navigators can perform the required duties.

Insurance Code §4154.051(b) says that if the commissioner determines the federal standards are insufficient to ensure that navigators can perform the required duties, the commissioner must make a good faith effort to work in cooperation with HHS and propose improvements to those standards. The section further says that if, after a reasonable interval, the commissioner determines that the standards remain insufficient, the commissioner by rule must establish standards and qualifications to ensure that navigators in Texas can perform their required duties.

The department has complied with these requirements in good faith, and has provided details of its efforts and its findings in both the rule proposal and this adoption order. The department notified HHS in advance of every public meeting and hearing regarding the navigator rules and potential insufficiencies in the federal regulations.

The department declines to incorporate the suggestion to delay the registration requirement. The effective date of the rule will be February 10, 2014. This provides three weeks before the date navigators need to be registered. However, the department provided notice of the commissioner's adoption of these rules on the department's website on January 21, 2014. Nothing prevents a navigator from preparing an application prior to the effective date of the rule, so navigators have an additional 20 days to prepare for compliance with the registration requirement before the effective date. In addition, the adopted rules do not require that navigators complete and provide proof of the department-certified training required by the adopted rules until May 1, 2014. Completing the necessary 20 hours of state-specific training will be the most time-consuming element of the registration process; but under adopted §19.4008(g) navigators do not need to complete or provide proof of completion of this training until May 1, which is 30 days after the end of the open enrollment period.

The department believes the need for the consumer protections included in the adopted rule warrants the March 1 applicability

date, and that allowing a two-month delay in showing proof of state-specific training provides sufficient time for navigators to register with the department, obtain the necessary training, and continue to provide assistance to consumers throughout the current open enrollment period.

The department declines to grant provisional authority to current navigators. At this time, the department does not know specifically who is providing enrollment assistance in a health benefit exchange; so the department has no means to grant provisional authority to those entities and individuals. Also, to grant provisional authority would extend the current environment of inconsistency and nontransparency associated with navigators currently operating in Texas. As indicated above, the department believes the need for consumer protections included in the adopted rule is great enough to warrant the March 1 applicability date.

The department agrees that a robust complaints process be implemented for navigators. The department's complaint process is already being used when concerns are raised with navigators operating in Texas; however, the department currently has little means of addressing concerns raised through complaints. The adopted rules include clear standards regarding navigator requirements and a section regarding the enforcement mechanisms that are available to the department to resolve concerns associated with navigators in Texas.

The department does not intend to regulate use of the term "navigator" beyond its use associated with the health benefit exchange, and the applicability provision included the proposed rule would prevent application to anyone not required to comply with the rules. However, several commenters, including this commenter, expressed concerns regarding limits on use of the term "navigator." In order to clarify the intent of the provision, the department has revised the adopted text that addresses use of the term "navigator" to clarify that the section only applies to entities and individuals subject to the rules as provided in §19.4003 (relating to Applicability). The department has done this by inserting a reference to §19.4003, which specifies those to whom the adopted rules apply. In addition, the department has revised the specific provision addressing prohibited use of the term "navigator" to prohibit "use of the term 'navigator' in a deceptive manner as part of an entity's name or website address or in an individual's title."

As proposed, the terms "individual navigator" and "navigator entity" were based on the statutory definition of "navigator" in Insurance Code §4154.002(3), which defines "navigator" as "an individual or entity performing the activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." Rather than using the words "activities and duties of a navigator" in the definitions for "individual navigator" and "navigator entity," the department used the defined term "navigator services." The defined term "navigator services" was intended to capture "activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." However, some commenters did not understand that Insurance Code §4154.002(3) defines the term "navigator" by referencing the "activities and duties of a navigator," and use of the department term intended to capture that phrase resulted in further confusion.

To avoid confusion regarding the statutory basis for the definition of "individual navigator" and "navigator entity," the department has revised the definitions of the terms to remove the defined term "navigator services" and incorporates the statutory phrase

"activities and duties of a navigator." In addition, the department has revised the definitions of these terms to include a citation to the specific subsection in 42 USC §18031, which sets out the duties of a navigator.

The proposed rules would apply to more than just recipients of federal grants under the ACA. This applicability is consistent with the definition for "navigator" contained in SB 1795. SB 1795 says "navigator means an individual or entity performing the activities and duties of a navigator as described by 42 USC §18031." Application of the rules consistent with the SB 1795 definition of "navigator" means the adopted registration process will apply to entities that want to perform the activities and duties of a navigator as described by 42 USC §18031, but that did not apply for, or applied for but did not receive, a federal navigator grant. One such organization has contacted the department several times since passage of the ACA, asking how it could receive authorization to act as a navigator.

Consistent with the purpose of SB 1795, the availability of more than just grant-recipient navigators in Texas will broaden the pool of navigators able to help Texans find and apply for health coverage under the exchange. As stated in Insurance Code Chapter 4154: "[T]he purpose of this chapter is to provide a state solution to ensure that Texans are able to find and apply for affordable health coverage under any federally run health benefit exchange, while helping consumers in this state." The department determined that the availability of more navigators in Texas-including navigators that are not federal navigator grant recipients-would increase the likelihood that members of the uninsured population in this state would have assistance in finding health through the exchange.

Application of the rules consistent with the SB 1795 definition of "navigator" also means that the standards adopted under the rules will apply equally to grant recipient and nongrant recipient navigators. For example, navigators with the organization that has contacted the department will need to have the same amount of education and training as navigators with any of the federal grant recipients in Texas. This will create a level playing field for all navigators in the state, and will help ensure that consumers receive enrollment assistance in a health benefit exchange from a qualified navigator.

Comment: A commenter submitted a written comment and testified at the public hearing for the proposed rule on January 6, 2014. The commenter noted that there has been particular outrage over the insufficient vetting and training required to become a navigator and the rules need to address these issues.

The commenter noted that federal regulations fail to protect personal information against potential fraud and abuse by navigators, and that the U.S. House of Representative Committee on Oversight & Government Reform found that "[p]oorly-trained navigators gave consumers incorrect information about the health care exchanges, violated HHS rules and procedures, and even encouraged applications to commit tax fraud in some instances."

The commenter further noted that in Texas, navigators have been caught encouraging people to lie about their income levels and medical histories in order to pay cheaper premiums for their insurance plans, and that HHS Secretary Kathleen Sebelius has admitted that convicted felons could serve as navigators because the federal government does not require navigators submit to background checks.

The Texas Legislature has, through SB 1795, given the Texas Department of Insurance broad authority to create rules for navigators in Texas. The commenter stated any rule adopted by TDI should address the concerns about privacy, fraud, and abuse mentioned in his comments.

The commenter also expressed the view that insurance is complicated, and to expect a noninsurance person to get up to speed on the complications of not only insurance, but of the ACA, in the 20 to 30 hours required by the federal law is not realistic.

The commenter noted that federal regulations fail to protect personal information against potential fraud and abuse by navigators.

The commenter further noted that in Texas, navigators have been caught encouraging people to lie about their income levels and medical histories, in order to pay cheaper premiums for their insurance plans and encouraging people to lie about smoking to reduce their premiums. The commenter notes that there are no background checks and thinks these people should not be involved with other people's insurance.

The commenter noted that SB 1795 empowered TDI to create rules for navigators in addition to the federal regulations, which the commenter believes are lacking. The commenter thinks it imperative that Texas adopt stringent rules for navigators to ensure that the privacy of applicants is protected and the applications are completely accurate.

The commenter states that the proposed rules are not overly burdensome or far-reaching, but simply ensure that navigators are properly vetted and properly trained, and the commenter encourages TDI to adopt the rules.

Agency Response: The department agrees that there has been outrage and concern voiced by some regarding the federal training and vetting processes for navigators, appreciates the commenter's support for the proposed rules.

The department believes the adopted rules will provide consumer protection by ensuring that navigators in Texas are sufficiently trained and establishing prohibitions that will help prevent potential fraud and abuse.

Comment: A commenter submitted written comments on the rule proposal. The commenter stated that the proposed rules goes beyond the SB 1795 goal of consumer protection and appears to create obstacles to accessing affordable insurance coverage, which contradicts the stated purpose of SB 1795 and makes it incumbent on the department to fully justify the rules.

The commenter asked how the department determined 40 hours as the length of additional training time for navigators, bringing total preregistration training requirements under the proposed rule to 60-70 hours. The commenter disagreed that navigators are like adjusters and should thus be subjected to an additional 40 hours of state training in addition to the federally required 20-30 hours of training. The commenter expressed that while the general subject areas of Texas Medicaid, privacy training, and ethics instruction are useful and important for Texas navigators, the actual hour requirement for training seems very high.

The commenter asked why navigators will have to pay registration fees and training costs when they cannot collect a fee for the services they provide. The commenter expressed that a navigator organization that oversees 30 navigators could incur about \$30,000 in costs in the first year, approximating enough to support a full-time navigator. The commenter stated that every dol-

lar diverted from enrollment assistance leaves fewer resources to serve Texas's 6.4 million uninsured. The commenter asked why the department did not adopt the training already available, at state expense, which provides state agency experts on Medicaid and medical privacy, to ensure accurate, appropriate, and continually updated training content, and to make wise use of federal tax dollars that support the navigator program.

The commenter asked how the department arrived at the proposed options for proving evidence of financial responsibility.

The commenter expressed concern that the proposed rules could shut down navigator services as of March 1, 2014, when demand will spike in the final month of open enrollment, because navigators must comply with the rules by March 1, 2014. The commenter stated that the timeline is too short for navigators to register with the department and obtain advance federal permission to deviate from grant budgets finalized last August in order to pay for costs to comply with these rules. The commenter asked that the department provide a detailed time line that reflects each of the steps that a navigator organization and their associated navigator individuals would have to accomplish to come into compliance with the proposed rule and a time frame for which each step can reasonably be completed. The commenter also asked that when setting the registration effective date, the department use a reasonable and complete time line designed to foster, not prevent, compliance.

The commenter expressed that the proposed rules extend beyond navigator grantees under the ACA and authorization under SB 1795 because they prevent family members from helping other family members apply for insurance; and local church volunteers, neighbors, and legislative staff from helping uninsured Texans enroll in the exchange. The commenter asked how extending the registration requirements to almost anyone providing enrollment assistance promotes the protection of Texas consumers. The commenter said the proposed rules would prevent organizations and individuals who provide basic information on health coverage programs (including Medicaid and CHIP) from using the term "navigator" as a job title if they do not go through the state registration process. The commenter stated that many healthcare-related organizations use the term "navigator" (like patient navigators and cancer navigators) to describe the individuals who help patients understand and connect with healthcare and health coverage. The commenter asked how restricting the use of the term "navigator" outside of the federally-operated health benefit exchange serves to promote the protection of Texas consumers.

Agency Response: The department agrees that it has a duty under Government Code Chapter 2001 to provide explanations related to its rules. Government Code §2001.033(a) establishes specific requirements for a state agency to address in adopting a rule. With respect to an agency's compliance with the intent of the law, subsection (a)(1)(B) requires the adoption order to include a summary of the factual basis for the rule as adopted that demonstrates a rational connection between the factual basis for the rule and the rule as adopted. Further, subsection (a)(1)(C) requires the inclusion of a concise restatement of the particular statutory provisions under which the rule is adopted and of how the agency interprets the provisions as authorizing or requiring the rule. The department provides this summary in this adoption order under the heading statutory authority. In addition to this explanation, the department provided notice of cost information and an economic impact statement and regulatory flexibility analysis in its proposal published in the *Texas Register* at 38 TexReg

8776 through 8778, and the proposal further included the department's explanation of the legal and factual basis for its proposed rule at 38 TexReg 8769 through 8776 and 8779 through 8780. The department incorporates by reference each of these explanations into this response.

The department appreciates the supportive comment concerning the rule's additional training requirements in the general subject areas of Texas Medicaid, privacy training and ethics instruction. In response to comment, the rule as adopted does not require 40 hours of additional training. Instead, the adopted rule requires 20 hours of state-specific training with the specific requirements being contained in adopted §19.4008. The department determined that additional training is necessary based on input received during the department's review of the federal regulations and the rulemaking process. Several navigator entities in Texas have independently decided that federal training requirements are insufficient and either employ individuals who have additional training or specialized experience to serve as navigators, or they provide extra training beyond what is required by the federal regulations. To ensure the qualification of all navigators in Texas, the department incorporated requirements for additional training into the adopted rules. The adopted rules require additional training in the following areas: five hours on Texas-specific Medicaid and Children's Health Insurance Program provisions, five hours on applicable privacy requirements, five hours on ethics, two hours on basic insurance terminology and how insurance works, two hours of exam preparation, and one hour for a final examination.

The department disagrees that the standards for training are too high. As stated in the department's proposal, the training standards stated in 45 CFR §155.215 do not address Texas-specific Medicaid, privacy beyond the standards under 45 CFR §155.260, or navigator ethics. The listed contents of the training modules for the federal training do not include such necessary topics as: Texas Medicaid eligibility, enrollment processes, or benefits; Texas statutes and rules protecting nonpublic information; insurance fraud; ethical behavior of navigators; duty of navigator to a consumer; or the difference between ethics and laws.

The standards set by federal navigator regulations under 42 USC §18031 do not require navigators to receive education related to Texas Medicaid, Texas statutes and rules protecting nonpublic information, or ethics. Requiring a certain number of hours of training as a prerequisite to a qualification is consistent with the requirements for navigators in other states. It also reflects the current practice of several of the federal navigator grant recipients in Texas that only employ individuals who have additional training or experience or require training beyond what federal regulations require. The department believes that these requirements will ensure that navigators are qualified, and provides individual navigators with enough flexibility to choose the course they take to meet the requirements.

The department notes that it lacks funding to provide navigator training. The department itself is not assessing training fees but does recognize that there are costs associated with obtaining the training. However, the department believes that the importance of this training, as explained in this response, outweighs the fact of the cost of the training. As adopted, the rules do not require 40 hours of additional training. Instead, the adopted rules require 20 hours of state-specific training. As previously noted, the department determined that additional training was necessary based on comments from stakeholders during the department's review

of the federal regulations which indicated that several navigator entities in Texas either seek out individuals with specialized experience to serve as navigators or provide extra training beyond what is required by the federal government. To ensure the qualification of all navigators in Texas, the department incorporated requirements for additional training into the adopted rules.

As a point of clarification, existing courses may be submitted to the department for certification in order to meet the training requirements. Navigator entities that chose to develop their own training courses and have them certified by the department can reduce their cost more. Under 28 TAC Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Education Programs, and Certification Courses), the cost to become an approved course provider is \$50, and there is no cost associated with the certification of a preregistration course, except for the cost to develop the materials. Based on this, a navigator entity's cost to provide initial training for individual navigators employed by or associated with it could be as low as \$50 plus the cost of training materials and supplies, regardless of the number of individual navigators employed by or associated with the navigator entity.

In response to this comment and similar comments, expressing concerns regarding the registration fee, the department agrees to withdraw the proposed section that would establish registration and renewal fees and not include it in the adopted rule.

Although all requirements and deadlines are contained within the proposed rule, the department will post "frequently asked questions" on its website to assist applicants through the process. Specifically an individual navigator must register with the department by March 1, and complete and submit all required training to the department by May 1. Registration is accomplished by submitting a completed registration form with fingerprint information to the department, and passing a criminal background check. Processing an application can take as few as seven business days from the date the department receives the application; however, total processing time will depend on the content, accuracy, and completeness of the application submitted. and additional processing time may be required based on application screening questions or the contents of a criminal history report.

Navigator entities must register with the department by March 1, 2014. In order to register with the department a navigator entity must:

- (1) establish procedures for the handling of nonpublic information;
- (2) demonstrate financial responsibility as required under §19.4010;
- (3) provide to the department the procedures and evidence of financial responsibility required by §19.4005(a);
- (4) designate an officer, manager, or other individual in a leadership position in the entity to act as a responsible party on behalf of the entity and submit to fingerprinting and a background check;
- (5) provide a list of individuals performing navigator services on behalf of or under the supervision of the entity; and
- (6) complete and provide to the department an application for registration.

A navigator entity or individual navigator must apply for renewal of registration on a department-specified form no later than August 31 of each year.

The department respectfully disagrees that these adopted rules are designed to ensure the qualifications required for navigators will prevent people from obtaining health insurance. The department has no reason to believe that many navigators will not qualify to register under these rules. Instead, the rules will only prevent inadequately qualified persons from offering navigator services. As such, Texans who need navigator assistance to apply for health insurance coverage will not suffer as a result of the rules. The department disagrees that there the basic intent of the law is not being met. The department believes that the adopted rules implement SB 1795 and it provides the legal and factual basis for the rules.

Cost estimates for training that were outlined in the proposed rule vary between \$200 and \$800 dollars because the estimates were based on a cost range of \$5 to \$20 dollars per hour for 40 hours of state-specific training. In response to comments about training costs and the amount of training required, the department notes that the rules as adopted are revised from what the department proposed. As adopted, the rules only require 20 hours of state-specific training, which reduces the potential cost range for training to a range of \$100 to \$400 dollars.

In addition, navigator entities that chose to develop their own training courses and have them certified by the department can reduce their costs even more. Under 28 TAC Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Education Programs, and Certification Courses), the cost to become an approved course provider is \$50, and there is no cost associated with the certification of a preregistration course except for the cost to develop the materials.

Based on this, a navigator entity's cost to provide initial training for individual navigators employed by or associated with it could be as low as \$50 plus the cost of training materials and supplies, regardless of the number of individual navigators employed by or associated with the navigator entity.

The effective date of the rule will be February 10, 2014. This provides three weeks before the date navigators need to be registered. However, the department provided notice of the commissioner's adoption of these rules on the department's website on January 21, 2014. Nothing prevents a navigator from preparing an application prior to the effective date of the rule, so navigators have an additional 20 days to prepare for compliance with the registration requirement before the effective date. In addition, the adopted rules do not require that navigators complete and provide proof of the department-certified training required by the adopted rules until May 1, 2014. Completing the necessary 20 hours of state-specific training will be the most time-consuming element of the registration process, but under adopted §19.4008(g) navigators do not need to complete or provide proof of completion of this training until May 1, which is 30 days after the end of the open enrollment period.

The department believes the need for the consumer protections included in the adopted rule warrants the March 1 applicability date, and that allowing a two-month delay in showing proof of state-specific training provides sufficient time for navigators to register with the department, obtain the necessary training, and continue to provide assistance to consumers throughout the current open enrollment period.

As proposed, the terms "individual navigator" and "navigator entity" were based on the statutory definition of "navigator" in Insurance Code §4154.002(3), which defines "navigator" as "an individual or entity performing the activities and duties of a nav-

igator as described by 42 USC §18031 or any regulation enacted under that section." Rather than using the words "activities and duties of a navigator" in the definitions for "individual navigator" and "navigator entity," the department used the defined term "navigator services." The defined term "navigator services" was intended to capture "activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." However, some commenters did not understand that Insurance Code §4154.002(3) defines the term "navigator" by referencing the "activities and duties of a navigator," and use of the department term intended to capture that phrase resulted in further confusion.

To avoid confusion regarding the statutory basis for the definition of "individual navigator" and "navigator entity," the department has revised the definitions of the terms to remove the defined term "navigator services" and incorporate the statutory phrase "activities and duties of a navigator." In addition, the department has revised the definitions of these terms to include a citation to the specific subsection in 42 USC §18031 that sets out the duties of a navigator.

Comment: One commenter submitted a written comment addressing the proposed rules. The commenter expressed desire for assistance from a navigator to get tax benefit available under the ACA. The commenter said Texas should be assisting people in securing insurance and voiced concern that Medicaid has not been expanded in Texas. The commenter also expressed displeasure with the civil discourse in Texas regarding Medicaid expansion.

Agency Response: The department agrees that navigator services may benefit some Texans. The department does not directly regulate Medicaid. If the Legislature acted to expand Medicaid within the parameters of the ACA, the Texas Health and Human Services Commission would be the implementing agency.

Comment: A commenter agreed that the federal rules for health care navigators are insufficient and supported the additional state rules sponsored by the department. The commenter stated that the federal privacy standards were not robust and that the federal training standards did not address Texas Medicaid and ethics sufficiently. The commenter supported criminal background checks and fingerprinting, and generally supported adoption of the proposed rules. The commenter said the Legislature passed SB 1795 to provide consumer protection by requiring that navigators have training necessary to advise consumers and assist through the process of finding the most appropriate health insurance options available. The commenter said navigators could pose a real threat to the safety and privacy of consumers, including lack of protection of sensitive information.

The commenter said the public has no way to check or verify credible navigators against the official list, making it difficult for consumers to make sure that someone presenting themselves as a navigator is legitimate, allowing potential for fraud. The commenter agreed that the department has complied with the intent of SB 1795 and encourages the department to proceed with the adoption of the navigator rules as soon as possible.

Agency Response: The department agrees that the federal navigator standards and rules are generally not sufficient to protect consumer privacy and sensitive information, and that without the adopted rules there is great potential for fraud and abuse. The rules provide for additional state-specific training on ethics, and background checks for individual navigators. The department

determined that additional training was necessary based on input received during its review of the federal regulations and the rulemaking process. Several navigator entities in Texas have independently decided that federal training requirements are insufficient and either employ individuals with specialized experience to serve as navigators or provide extra training beyond what is required by the federal government. To ensure the qualification of all navigators in Texas, the department incorporated requirements for additional training into the adopted rules. The department agrees that the as adopted rules should be implemented on the proposed dates.

Comment: In a written comment on the rule proposal, the commenter was concerned that the proposed rule created a broad prohibition on the use of the term "navigator" unless the individual or entity is registered with the Texas Department of Insurance. The commenter said the term "navigator" is commonly used in patient navigation services and has been for many years.

Agency Response: The department does not intend to regulate use of the term "navigator" beyond its use associated with the health benefit exchange, and the applicability provision included the proposed rule would prevent application to anyone not required to comply with the rules.

However, several commenters have expressed concern regarding limits on use of the term "navigator." In order to clarify the intent of the provision, the department has revised the adopted text addressing use of the term "navigator" to clarify that the section only applies to entities and individuals subject to the rules as provided for in §19.4003 (relating to Applicability). The department has done this by inserting a reference to §19.4003, which specifies those to whom the adopted rules apply. In addition, the department has revised the specific provision addressing use of the term "navigator" to prohibit "use of the term 'navigator' in a deceptive manner as part of an entity's name or website address or in an individual's title."

Comment: One commenter provided written comments and testimony contending that state level navigator registration should be free and mirror the registration requirements of similar benefits counseling programs already regulated by the department. The commenter noted that state registration fees, fingerprint background checks and additional fee-based education requirements, would create grant budget deficiencies within its current grant cycle. The commenter suggested that implementation of any new regulations and fees coincide with its next grant cycle in August 2014, so that it is able to place additional state costs within the federal budgeted grant amounts.

The commenter said that its members agreed to go above and beyond federal requirements and implement Level 1 background checks on navigators, which the commenter says identifies individuals who have been convicted of a felony and other criminal activity including fraud. The commenter said this background check was sufficient to protect consumers from being exposed to individuals with previous criminal activity. The commenter noted that while federally-required navigator training lacks state-specific information regarding Texas Medicaid enrollment, the requirement of 13 hours of Texas Medicaid training exceeds the requirements of the HICAP and Community Partners program.

The commenter also suggested that utilization of existing, free web-based training such as the Community Partners program is sufficient for navigators to help consumers understand their options for Texas Medicaid enrollment. The commenter noted

that the term "navigator" is a general term and should not be restricted to use by Affordable Care Act federal grantee navigators.

Agency Response: The department agrees with the comment regarding free registration, and registration fees are not included in the as adopted rules. The department disagrees that fingerprinting, background checks and training will be overly burdensome and expensive in relation to the realized benefits of consumer protection in the state. The department believes that criminal background checks are necessary for the protection of consumers.

The department appreciates the commenter's support of the topics included in the proposed preregistration course.

As adopted, the rules do not require 40 hours of additional state-specific training. Instead, the adopted rules attribute 20 hours of federal education to the initial training requirement, and require 20 hours of state-specific training, for a total of 40 hours of training, with the specific requirements being contained in adopted §19.4008. The department determined that additional training was necessary based on input received during the department's review of the federal regulations and the rulemaking process. Several navigator entities in Texas have independently decided that federal training requirements are insufficient and either employ individuals with specialized experience to serve as navigators or provide extra training beyond what is required by the federal government. To ensure the qualification of all navigators in Texas, the department incorporated requirements for additional training into the adopted rules.

The effective date of the rule will be February 10, 2014. This provides three weeks before the date navigators need to be registered. However, the department provided notice of the commissioner's adoption of these rules on the department's website on January 21, 2014. Nothing prevents a navigator from submitting an application for registration prior to the effective date of the rule, so navigators have an additional 20 days to prepare for compliance with the registration requirement before the effective date. In addition, the adopted rules do not require that navigators complete and provide proof of the department-certified training required by the adopted rules until May 1, 2014. Completing the necessary 20 hours of state-specific training will be the most time-consuming element of the registration process, but under adopted §19.4008(g) navigators do not need to complete or provide proof of completion of this training until May 1, which is 30 days after the end of the open enrollment period.

The department believes the need for the consumer protections included in the adopted rule warrants the March 1 applicability date, and that allowing a two-month delay in showing proof of state-specific training provides sufficient time for navigators to register with the department, obtain the required training, and continue to provide assistance to consumers throughout the current open enrollment period.

The department does not intend to regulate use of the term "navigator" beyond its use associated with the health benefit exchange, and the applicability provision included the proposed rule would prevent application to anyone not required to comply with the rules.

However, several commenters have expressed concern regarding limits on use of the term "navigator." In order to clarify the intent of the provision, the department has revised the adopted text addressing use of the term "navigator" to clarify that the section only applies to entities and individuals subject to the rules as provided for in §19.4003 (relating to Applicability). The depart-

ment has done this by inserting a reference to §19.4003, which specifies those to whom the adopted rules apply. In addition, the department has revised the specific provision addressing use of the term "navigator" to prohibit "use of the term 'navigator' in a deceptive manner as part of an entity's name or website address or in an individual's title."

Comment: One commenter spoke at both hearings and provided written comments. The commenter expressed areas of concern in relation to the proposed requirements but supported the exclusion of Certified Application Counselors and volunteers participating in the Texas Health and Human Services Commission's Community Partner Program. The commenter expressed concerns that the term "individual navigator" as defined is vague or overly broad. The commenter expressed concern that the proposed rule attempts to regulate a broader range of individuals than authorized by SB 1795.

Specifically the commenter said that the term "navigator" as defined expands applicability beyond the federal grant recipients described in 42 USC §18031(i). The commenter was concerned that the term, as defined, could include friends, relatives, clergy, and private sector human resource specialists who offer assistance or discuss health insurance. The commenter recommended that the rules be limited to individuals described in 42 USC §18031. The commenter expressed concern that the term "navigator services" was vague and overly broad in that §19.4004 will require registration and regulation of any individual or entity that provides any of the navigator services enumerated in §19.4002(4) and enrollment assistance to consumers. The commenter recommended that the department modify the term to require the performance of all the enumerated services.

In addition, the commenter expressed concern that the limitation of the use of the term "navigator" within the proposed rule should be amended to clarify that it is limited to the use of the term within the health insurance application assistance context and is not an attempt to restrict the use of the term generally.

Although supportive of the registration requirement, the commenter expressed concerns regarding the cost associated with the registration and training requirements. This commenter-expressed support for additional training specific to Texas Medicaid, but expressed concerns that the proposed rules would require the training and testing be developed by an outside vendor, ignoring the availability of existing training. The commenter recommended the rules be amended to reflect standards for proficiencies and urged the department to develop and implement training for navigators.

The commenter believed that the proposed prohibition on providing advice on substantive benefits or comparative benefits of different health benefits of different plans conflicts with the federal requirement that navigators facilitate selections of a plan. The commenter expressed concerns that the exemption for entities who provide navigator services under, and in compliance with, state or federal authority other than 42 USC §18031 was vague.

The commenter also expressed concern that the proposed requirement to maintain either a liability policy or posting of a bond is inconsistent with the type of policies typically available to non-profit organizations. The commenter expressed concern that the rule does not provide remedies for consumers defrauded by navigators or education for consumers.

The commenter recommended that the rule be amended to provide due process for navigator individuals and entities accused

of administrative violations under the rule. The commenter recommended the department delay the effective date of the rule in order to avoid challenges to the rule based on federal preemption grounds.

Agency Response: The department declines to limit the definition and applicability of registration requirements to only navigators who are described in 42 USC §18031. The department agrees that the proposed rules would apply to more than just recipients of federal grants under the ACA. This applicability is consistent with the definition for "navigator" contained in SB 1795, which says, "navigator means an individual or entity performing the activities and duties of a navigator as described by 42 USC §18031."

Application of the rules consistent with the SB 1795 definition of "navigator" means the adopted registration process will apply to those who want to perform the activities and duties of a navigator as described by 42 USC §18031, but who did not apply for, or applied for but did not receive, a federal navigator grant. One such organization has contacted the department several times since passage of the ACA, asking how it could receive authorization to act as a navigator.

The availability of more than just grant-recipient navigators in Texas will broaden the pool of navigators able to help Texans find and apply for health coverage under the exchange, which is consistent with the purpose of SB 1795 as stated in Insurance Code Chapter 4154: "[T]he purpose of this chapter is to provide a state solution to ensure that Texans are able to find and apply for affordable health coverage under any federally run health benefit exchange, while helping consumers in this state." The department determined that the availability of more navigators in Texas would increase the likelihood that members of the uninsured population in this state would have assistance in finding healthcare through the exchange.

Application of the rules consistent with the SB 1795 definition of "navigator" also means that the standards adopted under the rules will apply equally to grant recipient and non-grant recipient navigators. For example, navigators with the organization that has contacted the department will need to have the same amount of education and training as navigators with any of the federal grant recipients in Texas. This will create a level playing field for all navigators in the state, and will help ensure that consumers receive enrollment assistance in a health benefit exchange from a qualified navigator.

As proposed, the terms "individual navigator" and "navigator entity" were based on the statutory definition of "navigator" in Insurance Code §4154.002(3), which defines "navigator" as "an individual or entity performing the activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." Rather than using the words "activities and duties of a navigator" in the definitions for "individual navigator" and "navigator entity," the department used the defined term "navigator services." The defined term "navigator services" was intended to capture "activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." However, some commenters did not understand that Insurance Code §4154.002(3) defines the term "navigator" by referencing the "activities and duties of a navigator," and use of the department term intended to capture that phrase resulted in further confusion.

To avoid confusion regarding the statutory basis for the definition of "individual navigator" and "navigator entity," the department

has revised the definitions of the terms to remove the defined term "navigator services" and incorporate the statutory phrase "activities and duties of a navigator." In addition, the department has revised the definitions of these terms to include a citation to the specific subsection in 42 USC §18031 that sets out the duties of a navigator.

Section 19.4003(c) is intended to provide an exception to an entity or individual who performs the activities and duties of a navigator as described by 42 USC §18031, if that entity or individual does not perform those activities and duties under 42 USC §18031. To clarify this point, the department has revised §19.4003(c) as adopted to remove the undefined phrase, "assistance to consumers," and replaced it with the defined phrase, "navigator services."

In adopted §19.4003(f), the department has clarified the rule's applicability to state that it does not apply to "an individual who only provides navigator services to a person or persons related to the individual within the third degree by consanguinity or within the second degree by affinity, as determined under Government Code Chapter 573, Subchapter B."

Applicability of the rules to specific individuals and the need for the department to take action under the rules depends on the facts of the situation. This is the case for anyone regulated by the department, not just navigators. In most instances it may be clear that someone is performing an act regulated by the department, but at other times it may not be apparent if someone is acting as an agent or someone is performing the business of insurance. In those instances, the department must look closely at the facts of the case, and may even need to proceed to a contested case hearing to conclusively determine if an act is regulated by the department.

For example, there may not be a role for the department in the interaction of the commenter with the commenter's neighbor. If the commenter is not purporting to be a navigator and the commenter is not taking so many acts that the commenter's neighbor believes the commenter is a navigator, or is relying on the qualifications of the commenter as a navigator, the rules may not be applicable to the commenter. However, in other instances someone might deceptively pose as a navigator in an attempt to access a neighbor's private information, or someone may honestly want to act as a navigator to assist neighbors, but not actually understand how to provide such assistance. In those situations, the rules may be applicable and may be necessary to ensure consumer protection.

The department does not intend to regulate use of the term "navigator" beyond its use associated with the health benefit exchange, and the applicability provision included the proposed rule would prevent application to anyone not required to comply with the rules.

However, several commenters have expressed concern regarding limits on use of the term "navigator." In order to clarify the intent of the provision, the department has revised the adopted text addressing use of the term "navigator" to clarify that the section only applies to entities and individuals subject to the rules as provided for in §19.4003 (relating to Applicability). The department has done this by inserting a reference to §19.4003, which specifies those to whom the adopted rules apply. In addition, the department has revised the specific provision addressing use of the term "navigator" to prohibit "use of the term 'navigator' in a deceptive manner as part of an entity's name or website address or in an individual's title."

Cost estimates in the rule proposal for navigator training vary between \$200 and \$800 dollars because the estimates were based on a cost range of \$5 to \$20 dollars per hour for 40 hours of state-specific training. In response to concerns in this and other similar comments about training costs and the amount of training required, the department has revised this requirement in the adopted rules from what the department proposed. As adopted, the rules only require 20 hours of state-specific training, which reduces the potential cost range for training to \$100 to \$400 dollars.

In addition, navigator entities that choose to develop their own training courses and have them certified by the department can reduce their cost more. Under 28 TAC Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Education Programs, and Certification Courses), the cost to become an approved course provider is \$50, and there is no cost associated with the certification of a preregistration course except for the cost to develop the materials. Based on this, a navigator entity's cost to provide initial training for individual navigators employed by or associated with it could be as low as \$50 plus the cost of training materials and supplies, regardless of the number of individual navigators employed by or associated with the navigator entity.

Nothing in the proposed rule requires that training or examinations be provided by a specific vendor. Under the proposed rules, the review and approval process for training courses will be the same as the department applies for insurance adjuster prelicensing courses. The examination for a course certified under the process must be administered by the course provider as a component of the course. In order to clarify the different methods that may be used for navigator education courses, proposed §19.4009 was modified to insert a new subsection (c) into the text stating that the education course format "may consist of classroom courses, classroom equivalent courses, self-study courses, or one time event courses..." The department proposed and adopts this approach to ensure availability of navigator training options across the state, so that navigators do not need to travel to satisfy them. It also means navigator registrants will not need to use a specific vendor for course work or exams or travel hundreds of miles to take an exam. Under this approach, a navigator entity may even choose to apply with the department to become a course provider and develop its own course material.

The commenter appears to address proposed §19.4014(a)(5) when expressing concern that the proposed rule would prevent a navigator from helping a consumer understand and compare benefits to make an informed insurance choice. As proposed, §19.4014(a)(5) would prohibit a navigator from "provid[ing] advice regarding substantive benefits or comparative benefits of different health benefit plans."

The intent of this provision was not to prevent navigators from discussing the coverage available under plans, but rather to prohibit navigators from making blanket statements regarding which plan is more beneficial. The choice of which plan is better should be made by the consumer, not the navigator. This prohibition is based on Insurance Code §4154.101(a)(4), which prohibits a navigator who is not licensed under Insurance Code Chapter 4054 (relating to Life, Accident, and Health Insurance Agents), from offering advice or advising consumers on which qualified health plan available through a health benefit exchange is preferable.

However, based on this comment and statements made by other commenters, it is apparent that proposed §19.4014(a)(5) needs

to be revised for clarity. In the rule as adopted, the department revised the provision to track the language of Insurance Code §4154.101(a)(4). In addition, the adopted text follows this revised provision with a subsection that tracks Insurance Code §4154.101(b), which says a navigator is not prohibited under Insurance Code §4154.101 from "providing information and services consistent with the mission of a navigator."

The intent of the financial responsibility requirement is to protect individuals against wrongful acts, misrepresentations, errors, omissions, or negligence of the navigator entity, its employees, or navigators associated or employed with the navigator entity. This is a necessary accountability standard for regulation of navigators that is lacking in federal standards. The department acknowledges that demonstrating compliance with the financial responsibility requirement may result in costs for navigator entities. In response to this and other similar comments regarding the potential cost associated with the requirement, the department has reduced the surety bond amount included in §19.4010(a)(1) to \$25,000, which would reduce the cost of compliance for any navigator entity that selected that option for demonstrating financial responsibility.

The effective date of the rule will be February 10, 2014. This provides three weeks before the date navigators need to be registered. However, the department provided notice of the commissioner's adoption of these rules on the department's website on January 21, 2014. Nothing prevents a navigator from submitting an application for registration prior to the effective date of the rule, so navigators have an additional 20 days to prepare for compliance with the registration requirement before the effective date. In addition, the adopted rules do not require that navigators complete and provide proof of the department-certified training required by the adopted rules until May 1, 2014.

Completing the necessary 20 hours of state-specific training in order to show proof of it will be the most time-consuming element of the registration process, but under adopted §19.4008(g) navigators do not need to complete or provide proof of completion of this training until May 1, which is 30 days after the end of the open enrollment period.

The department believes the need for the consumer protections included in the adopted rule warrants the March 1 applicability date, and that allowing a two-month delay in showing proof of state-specific training provides sufficient time for navigators to register with the department, obtain the required training, and continue to provide assistance to consumers throughout the current open enrollment period.

The department does not agree that the proposed rule must be amended to provide due process for navigator individuals and entities accused of administrative violations under the rule, because §19.4015 describes the department's process if the department believes an individual has committed a violation of any provision of Insurance Code Chapter 4154 or the adopted rules. The section provides for a contested case hearing under Government Code Chapter 2001, and it describes what actions the department may take if the commissioner determines an administrative violation has occurred.

However, the department agrees to make clarifying revisions to the section to ensure that it tracks other rule sections that address administrative violations of entities or individuals operating under an authorization issued by the department. This will ensure a standardized process for handling possible administrative violations.

Comment: A commenter submitted two sets of written comments and provided testimony at the public hearing held on December 20, 2013.

In the first written comment, the commenter observed that despite years of successful enrollment through Texas partnership with community groups in other health coverage programs, navigators under the ACA have come under intense scrutiny. The commenter included a background statement that described the tasks performed by navigators and listed navigator entities that received federal grants to provide navigator services in Texas.

In the first written comment, the commenter listed concerns with the proposal that the commenter said could prevent or delay the work of navigators. But the commenter also noted that some provisions in the proposed rule could increase consumer protections if the department revised the rules as suggested by the commenter.

The commenter said that if the proposed rules limited or delayed the work of navigators, the proposed rules could harm millions of uninsured Texans, but that if the proposed rules were strengthened they could establish important consumer protections and empower navigators to perform their important functions.

One concern addressed in the first written comment was that the rules could prevent a navigator from helping consumers understand and compare covered benefits so that consumers can make informed insurance choices. The commenter said explaining and comparing the features of different health plans is not the same thing as recommending a consumer buy a specific plan, and that federal rules require that navigators be able to help consumers compare and understand insurance in order to provide fair, accurate, and impartial information to consumers and facilitate the selection of an exchange health plan. The commenter reiterated this concern in the second written comment.

Another concern addressed in the first written comment was that the commenter feared the proposed rules could shut down navigator services as of March 1, 2014, the final month of open enrollment, when demand for assistance will spike. The commenter said that the applicability date of March 1, 2014, will give navigators only one month to jump through many hoops. The commenter said this is too short a timeline for navigators to obtain federal permission to deviate from their grant budget, which takes 30 to 60 days, or to get through the department's registration system, which could take two to three weeks. The commenter says it is impossible for a navigator to complete registration in less than three months, and that the rules should ensure that navigators can continue to provide assistance while they work toward compliance.

The commenter also addressed this concern with the applicability date in the second written comment, suggesting that the department develop and justify a reasonable time line for compliance in its adoption order that takes into account all of the needed steps. The commenter said that anything short of three months at a minimum would be reasonable or justifiable.

The commenter said the department should not require navigators to incur costs for compliance before the next federal grant cycle awards are made, so that compliance costs can be budgeted into grants at the outset, and that full compliance for anything that has a cost should not be required until one month after the next grant awards are announced, giving navigators both time to build expenses into their grant budgets from the outset and time to cover expenses once federal funding is available.

The commenter said that if the department requires compliance before the next grant cycle, it should allow navigators to continue operations as long as they demonstrate they are working in good faith toward compliance. The commenter said this would ensure that navigator services continue to be available even if a navigator could not comply for reasons beyond the navigator's control. A third concern was that the rule would require that navigators pay excessive and unnecessary fees before they could provide free application assistance to the poor and uninsured. These concerns about costs were reiterated in the commenter's second written comment.

The commenter said that the department's estimated costs show the first year of compliance under the rule would cost between \$320 and \$980 for each individual navigator, with additional costs of between \$960 and \$1,460 for each navigator entity. The commenter asserted that a navigator entity that oversees 30 navigators could see compliance costs of \$30,000, an amount that could otherwise pay an additional navigator. With the second written comment the commenter provided a breakdown examining costs the commenter anticipated could apply to navigator entities.

The commenter also said the rule proposal did not take all possible costs into consideration. The commenter said that additional costs would result from printing and mailing documents and obtaining identification. In addition, the commenter said the proposed rules would require navigators to travel to proctored testing cities for exams offered by a department testing vendor, which would mean that some navigators might have to travel hundreds of miles to reach a testing site.

The fourth concern was that the proposed 40-hour state training requirement is excessive and unjustified. The commenter said that when combined with federal training requirements, the proposed rules would require 60 to 70 hours of training and would result in significant costs of \$200 to \$800 dollars per navigator.

The commenter said the rules would hold navigators to a much different standard than other community-based enrollment assisters, such as Health Insurance Counseling and Advocacy Program counselors, who receive 25 hours of free training. The commenter provided a table comparing navigator requirements under the proposed rules with requirements for other types of enrollment assisters. The commenter suggested that the department allow navigators to satisfy the state training requirements under the rule through use of training for other state programs.

The commenter reiterated the commenter's concerns about the training requirements during public hearing testimony and in the commenter's second written comment.

In the second written comment, the commenter expanded on the discussion of training. The commenter suggested that the department modify the rule to clarify that federal training satisfies the state training requirement, as was done by several other states with federal marketplaces and state navigator laws. The commenter said that if the department would not count federal training as satisfying state requirements, it should use appropriate, and no-cost trainings available for community-based application assisters for Texas-specific Medicaid and privacy content.

The commenter said that if the department cannot find an existing public training benchmark for navigator ethics, it should create that training and make it available free-of-charge through the department's website. The commenter said the 40 hours of additional state training required by the rule was excessive and unjustified compared to training requirements of other states with

federally facilitated marketplaces and was not supported by the statute. The commenter maintained that the proposed 40 hours of state training would reduce navigator services available in the state and would constitute an unwise use of state taxpayer dollars. The commenter also said the department was not authorized to contract with a testing service.

The commenter addressed concerns with the timeframe for the training requirements as included in the rule proposal. The commenter said the department needed to develop and justify a reasonable time line for compliance with initial education requirements in its adoption order, taking into account all of the needed steps relevant to implementation. The commenter recommended the department consider providing some contingency or flexibility for its ultimate effective date in case training and in-person testing is not available in time in some or all parts of the state. The commenter said it appeared impossible to ensure that navigators could reasonably complete initial education requirements by May 1, 2014, as required in proposed §19.4009(f). This unreasonable start date could shut down the navigator program in the state, harming consumers by limiting access to navigators. The commenter believed the timeline could possibly violate state and federal law because of this.

The commenter suggested that the department consider providing some contingency or flexibility for its ultimate effective date in case training and in-person testing is not available in time in some or all parts of the state.

In the second written comment, the commenter also addressed issues with language accessibility in regard to training. The commenter said that the department should ensure that all required applications, training, continuing education, and tests are available in English and Spanish, at a minimum. The commenter said the department should ensure that people taking tests in either English or Spanish as a second language can reasonably get extra time to complete exams, but that this could be prevented under the rules' overly rigid requirements for the number of questions and time allotted for tests. The commenter said that although federal law requires navigators to provide culturally competent information and Insurance Code Chapter 4154 requires the commissioner to ensure that navigators can provide culturally and linguistically appropriate information, nothing in the rule contemplates appropriate language accessibility to applications, training, and tests for navigators that do not speak English or speak English as a second language.

Another concern addressed in the first written comment was that the proposed rules created a broad ban on the use of the term "navigator" in a title, organization name, or website. The commenter asserted that the rules would prevent anyone who provides basic information about health coverage programs, including Medicaid or the Children's Health Insurance Plan (CHIP), from using the term "navigator" without first going through the department's registration process. The commenter reiterated this concern in the second written comment.

Another concern addressed in the first written comment was that the proposed rules would apply beyond navigators who are recipients of federal grants under the ACA. The commenter said that no exceptions existed in the rule for individuals assisting friends or family members complete an application for Medicaid, CHIP, or the Exchange. The commenter said that the rule would also require registration by hospital and clinic staff and community organizations that are enrollment professionals but do not conduct enrollment through a formal federal or state program. The commenter included with the first written comment a flow

chart the commenter said showed who would be regulated under the proposed rules. The commenter reiterated this in public hearing testimony and in the second written comment.

In the second written comment, the commenter said the department failed to complete the steps in Insurance Code §4154.051(b) that give the department statutory authority to publish rules on navigator standards. The commenter notes that the preamble of the proposed rule preamble lays out the department's review of the federal standards and includes the commissioner's determination regarding the sufficiency of those standards. The commenter also notes that the department

The commenter also said the department failed to "claim that it has made a good faith effort to work in cooperation with the federal government to improve standards" and that it had not provided a reasonable interval for federal action.

The commenter noted that the proposal preamble requested that HHS consider implementing federal regulations. The commenter questioned whether this was a good faith effort at cooperation and whether it provided a reasonable interval for the federal government to respond.

The commenter noted that the proposed rule would require two training structures for navigators, two exams, two registrations, and two regulators for navigators. The commenter said that until Texas gives HHS a chance to revise its standards, it is not clear whether it will. The commenter recommended that the department repropose the rule after demonstrating compliance with Insurance Code §4154.051(b).

The commenter also said the proposed rules impose direct and indirect costs to local governments, but that the rule proposal's fiscal note failed to take that into account. The commenter said that local governments that are navigator entities will face the same costs as other navigator entities, and that other local governments that are not exempt under §19.4003(c) or (d) and which provide application assistance for Medicaid or CHIP will face costs. The commenter recommended that the department repropose the rules to address cost imposed on local governments and give them the chance to respond to it.

The commenter also said that the general excessive costs for compliance with the proposed rules will result in fewer navigators in Texas overall, meaning that fewer uninsured Texans will gain insurance and the costs for their care will be borne by counties and hospital districts across the state.

In the second written comment, the commenter suggested that the department delete the proposed definitions for "enrollment assistance in a health benefit exchange" and "navigator services." The commenter suggested that the department define "navigator entity" and "individual navigator" as "entities that have entered into a cooperative agreement with HHS to provide navigator functions and associated individual navigators governed under that agreement and certified by HHS, respectively." In addition, the commenter said, the definitions of "navigator entity" and "individual navigator" should include entities and individuals who hold themselves out as federally-contracted or federally-certified navigators.

To support this recommendation, the commenter addressed several concerns regarding the proposed definitions of "enrollment assistance in a health benefit exchange" "individual navigator," "navigator entity," and "navigator services." The commenter said the terms were inconsistent with the definition of "navigator" in Insurance Code Chapter 4154 because the Chapter 4154 defi-

inition of navigator refers only to the grant-funded, federal navigator program established in the ACA. The commenter said the terms do not make sense within the context of Insurance Code Chapter 4154. The commenter said the terms were inconsistent with the intent of SB 1795, which focuses solely on navigators established by the ACA.

The commenter raised another concern about the terms "individual navigator," "navigator entity," and "navigator services." The commenter said the terms were inconsistent with Insurance Code Chapter 4154 because Insurance Code Chapter 4154 and the federal law it references require navigators to perform multiple duties. The commenter also said the proposed definition of "navigator services" was inconsistent with the definition of "navigator" and the six navigator duties listed in Insurance Code Chapter 4154 and that it was overly broad and adapted language from Insurance Code Chapter 4154 in a manner that made no sense.

The commenter said the proposed definitions of "enrollment assistance in a health benefit exchange" and "navigator services" were overly broad and could present free speech concerns. In addition, the commenter said the definition of "enrollment assistance in a health benefit exchange" is overly broad and inconsistent with Chapter 4154.

Finally, in support of the suggestions, the commenter said the proposed definition of "enrollment assistance in a health benefit exchange" would extend to enrollment assistance for Medicaid and CHIP and would impact community-based assistance for and perhaps enrollment in those programs. The commenter reiterated these concerns in the commenter's public hearing testimony.

Throughout the second written comment the commenter reiterated the concern that the defined terms would apply beyond the exchange, suggesting that the rule could have a negative impact on application assistance and enrollment in Medicaid and CHIP by causing an onerous and expensive registration process for entities and individuals who help with applications for Medicaid and CHIP; restricting the free speech rights of entities and individuals who help with applications for Medicaid and CHIP; and wasting time staff of entities and individuals who help with applications for Medicaid and CHIP.

The commenter supported the exemption for entities and individuals that provide consumer assistance under and in compliance with state or federal authority, other than the ACA. The commenter also supported the exemption for Certified Application Counselors, which Texas lacks the authority to regulate under federal law.

In the second written comment, the commenter suggested narrowing applicability of the rule further to exempt federally contracted in-person assisters, exchange employees, and the exchange itself. The commenter said the proposed rules did not exempt entities and individuals providing assistance under the authority of the ACA other than CACs. The commenter said applicability would extend to HHS subcontractors providing enrollment assistance, and that the rules would inappropriately extend to the exchange staff that provide application assistance via phone or online chat, and even to the exchange itself.

In the second written comment, the commenter suggested the department revise the registration requirements in §19.4004 to track the definitions for "individual navigator" and "navigator entity."

In the second written comment, the commenter expressed several concerns the commenter had with the registration requirements under §19.4005. The commenter said the registration system is more cumbersome than what is needed to accomplish tasks in Insurance Code §4154.051(e) and lacks statutory support. The commenter said the requirement under §19.4005(a)(2), which requires an entity demonstrate proof of financial responsibility in a registration application, was not supported by state statute and violates the spirit of federal law. The commenter also said that the requirement in §19.4005(b)(2) that individual navigators provide proof of citizenship or legal employment to the department was not supported by statute, would unnecessarily prevent some individuals from acting as navigators, and would duplicate processes performed by navigator entities when hiring staff. The commenter recommended deleting §19.4005(b)(2).

In the second written comment, the commenter said the renewal application due date of August 31 in §19.4007(a) would burden registrants with an unnecessarily short period of time between when grant announcements are made and renewals are due which could prevent compliance. The commenter recommended the department required renewals by October 15 of each year. The commenter also suggested that instead of September 30, navigator registrations should expire annually on November 14, the day before open enrollment starts, unless a renewal application is received by the department by October 15.

In the second written comment, the commenter said the department should not charge navigator entity and individual navigator registration and renewal fees. The commenter said that navigator registration and renewal fees are not authorized by Insurance Code Chapter 4154 and that the fees would availability of navigator services in Texas.

In the second written comment, the commenter suggested that the department allow navigators to display employer-issued photo identification badges instead of state-issued identification. The commenter said that employer-issued identification were common in many hospital, clinic, governmental, and nonprofit settings where application assistance was provided. The commenter said that the department's requirement that navigators present a state-issued identification badge to clients placed the navigator's privacy in jeopardy.

Agency Response: The department agrees in part and disagrees in part with various portions of the commenter's comments. The department has made some revisions to the rule text as proposed to address some of the comments made by the commenter and similar concerns voiced by other commenters.

The commenter appears to address proposed §19.4014(a)(5) when expressing concern that the proposed rule would prevent a navigator from helping a consumer understand and compare benefits to make an informed insurance choice. As proposed, §19.4014(a)(5) would prohibit a navigator from "provid[ing] advice regarding substantive benefits or comparative benefits of different health benefit plans." The intent of this provision was not to prevent navigators from discussing the coverage available under plans, but rather to prohibit navigators from making blanket statements regarding which plan is more beneficial. The choice of which plan is better should be made by the consumer, not the navigator. This prohibition is based on Insurance Code §4154.101(a)(4), which prohibits a navigator who is not licensed under Insurance Code Chapter 4054 (relating to Life, Accident, and Health Insurance Agents), from offering advice or advising

consumers on which qualified health plan available through a health benefit exchange is preferable.

However, based on this comment and statements made by other commenters, it is apparent that proposed §19.4014(a)(5) needs to be revised for clarity. In the rule as adopted, the department revised the provision to track the language of Insurance Code §4154.101(a)(4). In addition, the adopted text follows this revised provision with a subsection that tracks Insurance Code §4154.101(b), which says a navigator is not prohibited under Insurance Code §4154.101 from "providing information and services consistent with the mission of a navigator."

The department does not agree that the applicability date of March 1 will shut down navigator services. The effective date of the rule will be February 10, 2014. This provides three weeks before the date navigators need to be registered. However, the department provided notice of the commissioner's adoption of these rules on the department's website on January 21, 2014. Nothing prevents a navigator from submitting an application for registration prior to the effective date of the rule, so navigators have an additional 20 days to prepare for compliance with the registration requirement before the effective date. In addition, the adopted rules do not require that navigators complete and provide proof of the department-certified training required by the adopted rules until May 1, 2014. Completing the necessary 20 hours of state-specific training will be the most time-consuming element of the registration process, but under adopted §19.4008(g) navigators do not need to complete or provide proof of completion of this training until May 1, which is 30 days after the end of the open enrollment period.

The department believes the need for the consumer protections included in the adopted rule warrants the March 1 applicability date, and that allowing a two-month delay in showing proof of state-specific training provides sufficient time for navigators to register with the department, obtain the required training, and continue to provide assistance to consumers throughout the current open enrollment period.

The department does not agree that navigator entities who are federal grant recipients will need to obtain federal permission to deviate from their grant budgets based on the compliance costs of this rule. According to information the department received from HHS, navigator grant budgets only require amendments for changes in costs in excess of a 25 percent deviation. The department does not believe the compliance costs of the rules will approach that threshold, especially in light of the changes to reduce costs that the department has made in response to comments.

The department anticipates many entities and individuals will submit registration forms in the weeks before the applicability date of the adopted rules, and will assign staff as appropriate to ensure fast and efficient processing of applications.

Ultimately, the department believes that the need to ensure that the individuals who interact with consumers are qualified to serve as navigators necessitates application of the adopted rules in timeframe proposed.

The department disagrees with the commenter's suggestion to delay requirements for navigators until the next federal grant cycle awards are made, because such a delay would be inconsistent with SB 1795.

The effective date of SB 1795 was September 1, 2013. As of that date the commissioner was charged with determining the suffi-

ciency of federal standards for navigators, working with HHS to improve insufficient federal standards, and adopting state standards if the federal standards remained insufficient after a reasonable interval. The next cycle of federal grant awards will be made on or around August 15, 2014. This is nearly a full year after the effective date of SB 1795. Had the legislature intended for the department to wait a year before implementing standards adopted under SB 1795, it could have put included such a limitation in SB 1795.

The department declines to create an exception to compliance with the adopted standards for navigators working toward compliance, because it would result in uncertainty regarding which standards apply to which navigators. Such an uncertainty is one of the insufficiencies the department has identified in federal standards, and is working to correct with the adopted rules.

The department estimates that the cost to obtain a state-issued identification card is \$16 and that the identification would expire on the individual's birth date after six years. However, the department has also taken into consideration statements from navigator entities that they take steps to verify the backgrounds of individuals they hire as navigators. The department anticipates part of that verification is confirmation of the individuals' identity, which is typically done through use of official identification. The department disagrees with the assertion that the cost from printing and mailing documents and the cost of obtaining identification was not included in the proposal. The cost of printing and mailing an individual's application for registration was included in the proposal's cost note in the first paragraph following the heading "Costs related to an individual navigator." The cost of printing and mailing an entity's application for registration was included in the proposal's cost note in the fourth paragraph following the heading "Costs related to a navigator entity." The cost of identification was included in the proposal's cost note in the fourth paragraph following the heading "Costs related to an individual navigator."

The department does not agree that training requirements in the proposed rules would require that some navigators travel hundreds of miles to reach a testing site. Nothing in the proposed rule requires that training or examinations be provided by a specific vendor.

Under the proposed rules, the review and approval process for training courses will be the same as the department applies for insurance adjuster prelicensing courses. The examination for a course certified under the process must be administered by the course provider as a component of the course. In order to clarify the different methods that may be used for navigator education courses, proposed §19.4009 was modified to insert a new subsection (c) into the text stating that the education course format "may consist of classroom courses, classroom equivalent courses, self-study courses, or one time event courses..." The department proposed and adopts this approach to ensure availability of navigator training options across the state, so that navigators do not need to travel to satisfy them. It also means navigator registrants will not need to use a specific vendor for course work or exams or travel hundreds of miles to take an exam. Under this approach, a navigator entity may even choose to apply with the department to become a course provider and develop its own course material.

Requiring a certain number of hours of training as a prerequisite to a qualification is consistent with the requirements for navigators in other states. It also reflects the practice of several of the federal navigator grant recipients in Texas that the department

spoke with in preparing the proposed rules. Many navigator entities employ individuals with additional training experience or require that those they hire as navigators receive training beyond what is required by the federal regulations. The department believes that the rules as adopted will ensure that navigators are qualified while providing them enough flexibility to choose the courses they take to meet the preregistration education requirements.

The department is unable to provide free training to navigators, as is available to assistance providers in some other programs, because the department does not have the funds to cover the cost of it. No training is truly free. For example, the Texas Department of Aging and Disabilities receives grant funding from HHS to cover the expenses of HICAP training. The department did not address compliance costs for navigators in the fiscal note for SB 1795 for several reasons. First, a fiscal note on a bill only addresses costs to the agency to implement a bill. The department generally does not pay compliance costs for entities or individuals who seek an authorization issued by the department, so the department would not include those costs in a fiscal note. In addition, there were no federal navigator regulations in place at the time the fiscal note was drafted, and no department determination that the federal regulations were insufficient, so it was not clear what, if any, compliance requirements would be adopted under SB 1795.

The department agrees with the commenter's suggestion that federal navigator education be counted toward the training requirements of the rule. In response to concerns in this and other similar comments about training costs and the amount of training required, the department notes that the rules as adopted are revised from what the department proposed. As adopted, the 40-hour rule requirement allows a registrant to count 20 hours of federal training to the overall amount and only requires 20 hours of state-specific training. This reduces the potential cost range for training to \$100 to \$400 dollars. In addition, navigator entities that choose to develop their own training courses and have them certified by the department can reduce their cost more.

Under 28 TAC Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Education Programs, and Certification Courses), the cost to become an approved course provider is \$50, and there is no cost associated with the certification of a preregistration course except for the cost to develop the materials. Based on this, a navigator entity's cost to provide initial training for individual navigators employed by or associated with it could be as low as \$50 plus the cost of training materials and supplies, regardless of the number of individual navigators employed by or associated with the navigator entity.

Based on the discussion in the second written comment, the commenter apparently thinks the department will use select vendors for training and award a contract to a testing service for exams. This is not correct. As noted previously, anyone can register with the department as a course provider, including navigator entities. The exam must be included as a component of the course, and will be conducted by the course provider consistent with §19.4008, not a separate company operating under a department contract.

The department declines to modify the May 1 date to have the initial education course completed. Based on the number of course providers approved in Texas, the number of navigator initial education courses available in other states, and the ability of navigator entities to seek approval to provide the training themselves, the department does not anticipate there will be an issue with the

accessibility of training. The department believes the need for consumer protections associated with having well-trained navigators is great enough to warrant the May 1 date for compliance with the education and examination requirements.

The department declines to make a change to the rule prescribing specific language requirements for navigator training courses, because the department will apply the same requirements for navigator training courses as apply to all courses certified by the department. The department does not have preferred or required languages for courses submitted to the department for certification.

The department does not intend to regulate use of the term "navigator" beyond its use associated with the health benefit exchange, and the applicability provision included the proposed rule would prevent application to anyone not required to comply with the rules.

However, several commenters have expressed concern regarding limits on use of the term "navigator." In order to clarify the intent of the provision, the department has revised the adopted text addressing use of the term "navigator" to clarify that the section only applies to entities and individuals subject to the rules as provided for in §19.4003 (relating to Applicability). The department has done this by inserting a reference to §19.4003, which specifies those to whom the adopted rules apply. In addition, the department has revised the specific provision addressing use of the term "navigator" to prohibit "use of the term 'navigator' in a deceptive manner as part of an entity's name or website address or in an individual's title."

The department agrees that the proposed rules would apply to more than just recipients of federal grants under the ACA. This applicability is consistent with the definition for "navigator" contained in SB 1795, which says, "navigator means an individual or entity performing the activities and duties of a navigator as described by 42 USC §18031." Application of the rules consistent with the SB 1795 definition of "navigator" means the adopted registration process will apply to those who want to perform the activities and duties of a navigator as described by 42 USC §18031, but who did not apply for, or applied for but did not receive, a federal navigator grant. One such organization has contacted the department several times since passage of the ACA, asking how it could receive authorization to act as a navigator.

The availability of more than just grant-recipient navigators in Texas will broaden the pool of navigators able to help Texans find and apply for health coverage under the exchange, which is consistent with the purpose of SB 1795 as stated in Insurance Code Chapter 4154: "[T]he purpose of this chapter is to provide a state solution to ensure that Texans are able to find and apply for affordable health coverage under any federally run health benefit exchange, while helping consumers in this state." The department determined that the availability of more navigators in Texas would increase the likelihood that members of the uninsured population in this state would have assistance in finding health insurance through the exchange.

Application of the rules consistent with the SB 1795 definition of "navigator" also means that the standards adopted under the rules will apply equally to grant recipient and non-grant recipient navigators. For example, navigators with the organization that has contacted the department will need to have the same amount of education and training as navigators with any of the federal grant recipients in Texas. This will create a level playing field for all navigators in the state, and will help ensure that

consumers receive enrollment assistance in a health benefit exchange from a qualified navigator.

The statutory definition for "navigator" may be broad in that it encapsulates anyone performing navigator activities. However, the department has attempted to narrow the scope by which it will apply the broad statutory definition with the adopted rules. In the adopted definition for "navigator activities" the department has referenced specific activities listed in Insurance Code §4154.051(a) that warrant some oversight by rules. Additionally, the department has identified the specific navigator action of providing enrollment assistance in a health benefit exchange as warranting higher regulation under the rules, because a person performing that act would have access to a consumer's nonpublic information.

Applicability of the rules to specific individuals and the need for the department to take action under the rules depends on the facts of the situation. This is the case for anyone regulated by the department, not just navigators. In most instances it may be apparent someone is performing an act regulated by the department, but at other times it may not be clear whether someone is doing so. In those instances, the department must look closely at the facts of the case.

In adopted §19.4003(f), the department has clarified the rule's applicability to state that it does not apply to "an individual who only provides navigator services to a person or persons related to the individual within the third degree by consanguinity or within the second degree by affinity, as determined under Government Code Chapter 573, Subchapter B."

The department does not agree with the commenter's assertion that the department failed to complete steps in Insurance Code §4154.051(b) that give the department statutory authority to publish rules on navigator standards.

Insurance Code §4154.051(a) requires the commissioner to determine whether the standards and qualifications for navigators provided by 42 USC §18031 and any regulations enacted under that section are sufficient to ensure that navigators can perform the required duties.

Insurance Code §4154.051(b) says that if the commissioner determines the federal standards are insufficient to ensure that navigators can perform the required duties, the commissioner must make a good faith effort to work in cooperation with the United States Department of Health and Human Services and propose improvements to those standards. The section further says that if, after a reasonable interval, the commissioner determines that the standards remain insufficient, the commissioner by rule must establish standards and qualifications to ensure that navigators in Texas can perform their required duties.

The department has complied with these requirements in good faith, and has provided details of its efforts and its findings in both the rule proposal and this adoption order. Department staff conducted a thorough review of federal regulations and of the state of navigators in Texas and provided this information to the commissioner for her use in making a determination under Insurance Code §4154.051(a).

The review included a stakeholder meeting, conference calls and meetings with stakeholders, conference calls with HHS, posting of an outline describing possible insufficiencies in federal regulations and proposed solutions for those insufficiencies, all of which is detailed in both the rule proposal and this adoption order.

The department worked with HHS throughout this process, inviting HHS to participate in the stakeholder meeting, following up with HHS on topics discussed in conference calls, and soliciting HHS staff opinion on the department's proposed solutions and proposed rule.

In the final conference call the department had with HHS prior to the proposal of the rule, HHS staff said HHS was not currently considering revising regulations to address the issues raised in the department's outline and confirmed that the solutions set out in the outline did not present federal preemption concerns. HHS staff suggested that the department proceed with its proposal of state rules. Based on these statements by HHS staff, the department believes the federal standards will remain insufficient and that department proposal of state rules was appropriate under Insurance Code §4154.051(a) and (b).

The department's request in the proposal that HHS consider implementing federal regulations to address the insufficiencies found by the commissioner was not the first time the department asked HHS about revising federal standards. The department asked HHS staff if they were considering revised federal regulations to address the issues identified by the department in the conference calls conducted between department and HHS staff. When asked about revised regulations, the response was always that they were not aware of any or that changes may be made to the terms and conditions of navigator grant contracts. Any changes to the contract would not meet the standard to address the insufficiency in the federal regulations under Insurance Code §4154.051(b). In the last conference call before publication of the proposed rules, HHS staff suggested the department proceed with a proposal of its state rules.

The department does not agree with the commenter's assertion that proposed rule creates direct and indirect costs for local governments that the proposal fiscal note fails to take into account. The proposed rules do not establish or impose any requirements on state or local governments themselves. All requirements under the rule apply to individual navigators and navigator entities consistent with the department's authority under Insurance Code Chapter 4154.

Some local governments have established offices or chosen to operate as navigator entities, and others may choose to do so. In such instances, the navigator entities would need to comply with the regulations. However, this does not extend applicability of the regulations directly to the local government itself or impose a cost directly on the local government. Any costs apply to the local government only to the extent it is acting as a navigator entity.

In instances where a local government is acting as a navigator entity, consumer protection concerns are minimized because the local government is accountable to the public in ways a private organization is not. However, there is still a need for uniformity in regard to the standards that apply to individual navigators, regardless of who or what established the navigator entity they work for or are associated with.

One municipal government submitted comments on the proposed rules, and the department has revised the rule text as adopted to address issues raised in the written comment.

The department does not agree with the assertion that the rule will result in compliance costs to local governments that provide application assistance for Medicaid or CHIP. Under §19.4003, the adopted rules are not applicable to an individual or entity that provides navigator services under and in compliance with state

or federal authority other than 42 USC §18031, to the extent that the individual or entity is providing assistance consistent with that state or federal authority. Local governments may provide services similar to navigator services when they provide application assistance for Medicaid or CHIP, but they would not be providing such services under 42 USC §18031, so the rules would not be applicable to them.

The department declines to make the revisions to the proposed definitions for "enrollment assistance in a health benefit exchange," "navigator services," "navigator entity," and "individual navigator" suggested by the commenter. However, the department does adopt revisions to the proposed versions of these definitions in response to this and similar comments in order to clarify the terms.

Insurance Code Chapter 4154 requires the department to develop standards and qualifications for entities and individuals performing the activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section, following the commissioner's finding of insufficiencies in federal regulations and her attempts to resolve those insufficiencies through work with the HHS in accord with Insurance Code §4154.051(b). In the adopted rules, the department balances the needs of consumers with the burden of regulation on navigators in its preparation of the standards required by Insurance Code §4154.051(b).

The department determined that, while there is a broad range of activities and duties a navigator as defined by SB 1795 may perform, it is the act of assisting consumers with enrollment into the health benefit exchange that present the most potential for consumer harm, due to a navigator either being unqualified or acting with malicious intent. So the department has focused the standards adopted under the rules on entities and individuals performing that activity, adopting only minimal standards for entities and individuals performing other activities and duties of a navigator as described by 42 USC §18031 and the regulations enacted under it. To implement the standards in this way, the department developed the term "enrollment activities in a health benefit exchange."

The department does not agree that the proposed definition of "enrollment assistance in a health benefit exchange" would extend to enrollment assistance for Medicaid and CHIP, or that it would impact community-based assistance for, and perhaps enrollment in, those programs. However, based on the confusion voiced in this and similar comments regarding applicability of the term as proposed, the department has adopted a revised definition.

The department adopts a revised definition for the term "enrollment assistance in a health benefit exchange" by replacing the phrase, "completing the application for health coverage affordability programs," with the words, "applying for or enrolling in health coverage affordability programs."

The purpose of this change is to clarify that definition contemplates assistance in the specific act of applying for health coverage affordability programs available through the health benefit exchange, not merely assistance in completing an application form when the form is used for reasons other than applying for health coverage in the exchange. To further clarify this definition, the department has also incorporated in the definition additional examples of what would constitute providing assistance in the act of applying for health coverage affordability programs available through the health benefit exchange.

As proposed, the terms "individual navigator" and "navigator entity" were based on the statutory definition of "navigator" in Insurance Code §4154.002(3), which defines "navigator" as "an individual or entity performing the activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." Rather than using the words "activities and duties of a navigator" in the definitions for "individual navigator" and "navigator entity," the department used the defined term "navigator services." The defined term "navigator services" was intended to capture "activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." However, some commenters did not understand that Insurance Code §4154.002(3) defines the term "navigator" by referencing the "activities and duties of a navigator," and use of the department term intended to capture that phrase resulted in further confusion.

To avoid confusion regarding the statutory basis for the definition of "individual navigator" and "navigator entity," the department revised the definitions of the terms to remove the defined term "navigator services" and incorporate the statutory phrase "activities and duties of a navigator." In addition, the department has revised the definitions of these terms to include a citation to the specific subsection in 42 USC §18031 that sets out the duties of a navigator.

The department disagrees with the commenter's suggestion to create exemptions for federally contracted in-person assisters, exchange employees, or the exchange itself, and declines to make the suggested changes.

If a federally contracted in-person assister is performing the activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section, the federally contracted in-person assister falls under the definition of a navigator under SB 1795 and must comply with the department rules.

It is not necessary to create an exception for exchange employees, because they are already exempt under §19.4003(c). As adopted, §19.4003(c) exempts individual who provide navigator services under, and in compliance with, state or federal authority other than 42 USC §18031, to the extent that the individual or entity is providing assistance consistent with that state or federal authority. An HHS employee who is performing a task that is part of the employee's job with HHS is doing so under the laws that establish the HHS and authorize it to hire employees, not 42 USC §18031. It is also not necessary to exempt the exchange itself, because the exchange is not an entity that performs the activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section, it is the forum in which those activities occur.

The department agrees with the suggestion that the registration requirements in §19.4004 be revised to track the definitions for individual navigator and navigator entity, and has made this change in the rule text.

The department disagrees with the comments regarding §19.4005 and declines to make a change. Insurance Code §4154.051(e) is not the sole basis for the adopted rules. As previously noted in the response to this commenter, these rules are also adopted to implement state standards to address the insufficiencies of standards in federal regulations. In accord with Insurance Code §4154.051(b), the commissioner adopts standards and qualifications to ensure that navigators in Texas can perform required duties. The elements of the required registration help ensure that navigators have the necessary

qualifications and can meet the standards adopted under the rules.

In order to create consistency and certainty for navigator entities and individuals, the department declines to change the proposed registration and renewal dates. Since the department will need to complete the processing and provide an approval to the registrant prior to the effective date of the registration in order for the registrant to continue providing services during the next annual period, it seems advantageous for the annual Texas registration effective date to be before the open enrollment period begins. If for some reason an application submitted by a registrant is deficient or questions about a registrant's qualifications exist as of the effective date of the next annual period, the registrant will not be able to provide navigator services until the issues noted during the review of the application have been resolved. Having a period between the effective date of the Texas registration and the beginning of the federal open enrollment period will provide time to resolve the issues prior to Texans needing the most assistance during the open enrollment period.

In response to this comment and similar comments, the department agrees to withdraw the proposed section that would establish registration and renewal fees and not include it in the adopted rule.

The department disagrees with the commenter's suggestion that the rule permit use of employer-issued identification badges instead of requiring use of state-issued identification. Providing state issued identification is a reasonable and necessary requirement in order to protect consumers.

Comment: A commenter submitted written comments, saying it was critical to the safety of consumers to have the proposed common-sense regulations on navigators in place to protect their privacy, security, and health. The commenter said that lack of federal oversight of the navigator program has been glaringly evident throughout the United States, with two fraudulent, documented instances in Texas.

The commenter said that in each instance a navigator recommended that an applicant lie about their income or health in order to qualify for additional subsidies or lessen the costs of their health care plan. The commenter said misuse and abuse of taxpayer dollars will not be tolerated. The commenter said that this week the U.S. House Oversight and Government Reform Committee had a field hearing in Dallas to investigate some of the issues that have occurred in the three months that the navigator program has existed. The Committee released a report on how navigator and assister program mismanagement endangers consumers, the report notes, "The Administration decided not to require Navigators to undergo background checks or fingerprinting, even though Navigators will have access to highly sensitive and personal information, such as social security numbers and tax returns. In response to questioning from Senator Comynt, Secretary Sebelius replied that it is "possible" a convicted felon could become a navigator." With these types of frightening loopholes left by the federal government, it is Texas' responsibility to step in and protect the rights of consumers.

The commenter stated support for common-sense regulations proposed by the department. The commenter recommended providing enforcement mechanisms to allow the rules to be successful.

The commenter said that without Texas standards and regulation, there is little-to-no oversight of the individuals who will be handling highly sensitive information and guiding Texans in this

very important decision-making process. The commenter asked the department to regulate the navigators strictly and closely and thanked the department for its attention to Senate bill 1795 and the much needed oversight of Affordable Care Act navigators.

Agency Response: The department agrees that it is important for consumer protection to have regulations in place to protect the privacy and security of consumers. The department appreciates the supportive comment.

The department agrees with and appreciates the commenter's suggestion related to enforcement. The department refers to §19.4015, which provides for the commissioner or the commissioner's designee to initiate administrative proceedings if it is believed that an individual or entity has violated or is violating any provision of Insurance Code 4154 or 28 TAC Chapter 19, Subchapter W. The administrative proceedings may include sanctions, administrative penalties, termination of a registration, a cease and desist order, or any combination of these actions.

The department agrees that it is important for consumer protection to have oversight of the individuals who will be handling highly sensitive information and guiding Texans in this very important decision-making process.

Comment: The commenter had concerns regarding both the time and expense associated with the additional training requirements under the proposed rule. The commenter suggested that there was currently existing training that would meet training needs in order to protect consumers. The commenter suggested that the Department amend the proposed rule to focus on objective and content of required training and allow for the use of existing training to meet the proposed additional training requirements.

Additionally this commenter expressed concerns regarding the definition of "navigator" in the proposed rule. Specifically, the commenter said that, as defined "navigator" would include neighbors and family members who provided general assistance and information regarding insurance. The commenter suggested that the rule should be amended to limit the definition of navigator to federally recognized navigators.

The commenter also expressed concerns regarding the prohibition against navigators recommending a "specific health benefit plan" as overly broad. The commenter recommended that the Department clarify the prohibited actions under the rule.

The commenter expressed concerns that navigators would be unable to complete the registration and training requirements by the proposed effective date of the rules.

Agency Response: The department declines to make a change based on this comment. Requiring a certain number of hours of training as a prerequisite to a qualification is consistent with the requirements for navigators in other states. It also reflects the practice of several of the federal navigator grant recipients in Texas that the department spoke with in preparing the proposed rules. Many navigator entities employ individuals with additional training experience or require that those they hire as navigators receive training beyond what is required by the federal regulations. The department believes that the rules as adopted will ensure that navigators are qualified while providing them enough flexibility to choose the courses they take to meet the preregistration education requirements.

As adopted, the rules do not require 40 hours of additional state-specific training. Instead, the adopted rules attribute 20 hours of federal education to the initial training requirement, and require

20 hours of state-specific training, for a total of 40 hours of training, with the specific requirements being contained in adopted §19.4008. The department determined that additional training was necessary based on input received during the department's review of the federal regulations and the rulemaking process. Several navigator entities in Texas have independently decided that federal training requirements are insufficient and either employ individuals with specialized experience to serve as navigators or provide extra training beyond what is required by the federal government. To ensure the qualification of all navigators in Texas, the department incorporated requirements for additional training into the adopted rules.

Cost estimates in the rule proposal for navigator training vary between \$200 and \$800 dollars because the estimates were based on a cost range of \$5 to \$20 dollars per hour for 40 hours of state-specific training. In response to concerns in this and other similar comments about training costs and the amount of training required, the department has revised this requirement in the adopted rules from what the department proposed. As adopted, the rules only require 20 hours of state-specific training, which reduces the potential cost range for training to \$100 to \$400 dollars.

In addition, navigator entities that choose to develop their own training courses and have them certified by the department can reduce their cost more. Under 28 TAC Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Education Programs, and Certification Courses), the cost to become an approved course provider is \$50, and there is no cost associated with the certification of a preregistration course except for the cost to develop the materials. Based on this, a navigator entity's cost to provide initial training for individual navigators employed by or associated with it could be as low as \$50 plus the cost of training materials and supplies, regardless of the number of individual navigators employed by or associated with the navigator entity.

As proposed, the terms "individual navigator" and "navigator entity" were based on the statutory definition of "navigator" in Insurance Code §4154.002(3), which defines "navigator" as "an individual or entity performing the activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." Rather than using the words "activities and duties of a navigator" in the definitions for "individual navigator" and "navigator entity," the department used the defined term "navigator services." The defined term "navigator services" was intended to capture "activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." However, some commenters did not understand that Insurance Code §4154.002(3) defines the term "navigator" by referencing the "activities and duties of a navigator," and use of the department term intended to capture that phrase resulted in further confusion.

To avoid confusion regarding the statutory basis for the definition of "individual navigator" and "navigator entity," the department has revised the definitions of the terms to remove the defined term "navigator services" and incorporate the statutory phrase "activities and duties of a navigator." In addition, the department has revised the definitions of these terms to include a citation to the specific subsection in 42 USC §18031 that sets out the duties of a navigator.

The commenter appears to address proposed §19.4014(a)(5) when expressing concern that the proposed rule would prevent a navigator from helping a consumer understand and compare

benefits to make an informed insurance choice. As proposed, §19.4014(a)(5) would prohibit a navigator from "provid[ing] advice regarding substantive benefits or comparative benefits of different health benefit plans." The intent of this provision was not to prevent navigators from discussing the coverage available under plans, but rather to prohibit navigators from making blanket statements regarding which plan is more beneficial. The choice of which plan is better should be made by the consumer, not the navigator. This prohibition is based on Insurance Code §4154.101(a)(4), which prohibits a navigator who is not licensed under Insurance Code Chapter 4054 (relating to Life, Accident, and Health Insurance Agents), from offering advice or advising consumers on which qualified health plan available through a health benefit exchange is preferable.

However, based on this comment and statements made by other commenters, it is apparent that proposed §19.4014(a)(5) needs to be revised for clarity. In the rule as adopted, the department revised the provision to track the language of Insurance Code §4154.101(a)(4). In addition, the adopted text follows this revised provision with a subsection that tracks Insurance Code §4154.101(b), which says a navigator is not prohibited under Insurance Code §4154.101 from "providing information and services consistent with the mission of a navigator."

The effective date of the rule will be February 10, 2014. This provides three weeks before the date navigators need to be registered. However, the department provided notice of the commissioner's adoption of these rules on the department's website on January 21, 2014. Nothing prevents a navigator from submitting an application for registration prior to the effective date of the rule, so navigators have an additional 20 days to prepare for compliance with the registration requirement before the effective date. In addition, the adopted rules do not require that navigators complete and provide proof of the department-certified training required by the adopted rules until May 1, 2014. Completing the necessary 20 hours of state-specific training will be the most time-consuming element of the registration process, but under adopted §19.4008(g) navigators do not need to complete or provide proof of completion of this training until May 1, which is 30 days after the end of the open enrollment period.

The department believes the need for the consumer protections included in the adopted rule warrants the March 1 applicability date, and that allowing a two-month delay in showing proof of state-specific training provides sufficient time for navigators to register with the department, obtain the required training, and continue to provide assistance to consumers throughout the current open enrollment period.

Comment: A commenter claimed that the proposed rules would create barricades with restrictions the state wants to put on navigators.

Agency Response: The department does not agree with the comment because it does not believe that the federal regulations alone are sufficient. The department determined that additional requirements were necessary based on a thorough review of standards in federal regulations, as required by SB 1795; input from stakeholders in Texas; and conferences with HHS staff. Notably, several navigator entities in Texas have independently decided that federal requirements are insufficient. They perform their own background checks, employ individuals with specialized experience to serve as navigators, and provide extra training beyond what is required by the federal regulations. To ensure consistent and uniform qualification of all navigators in Texas, and meet the minimum standards established in Insur-

ance Code §4154.051(c), the department has incorporated standards for additional vetting and training into the adopted rules.

Comment: A commenter recommended changes to the proposed rules to ensure the final rule does not impede the law and instead that it will guarantee important protections for consumers. The commenter said the proposed rule would not protect consumers from fraud but instead would inhibit navigators and community advocates from doing their job and therefore is contrary to the law and thwarts the implementation of the ACA. The commenter said the definition of "navigator services" was too broad. Additionally, the commenter deems that the extra education requirements in the proposed rules were unnecessary.

The commenter said the financial responsibility requirements results in unnecessary financial burdens placed on navigators. These financial burden with the required extra training and financial reasonability provision could create unnecessary barriers prevent well-qualified persons from providing navigator services. The commenter asserted that the requirement to for navigator identification would prevent otherwise well-qualified persons from providing navigator assistance. These persons may be likely to provide outreach to underserved communities. The commenter also asserted that the identification requirement were also unnecessary to protect consumers from fraud.

Agency Response: The department appreciates the comments, and has made some amendments to the proposed rules after consideration of this and other similar comments.

To ensure clarity regarding the statutory basis for the term "navigator services," the department has revised that term to use the statutory phrase "activities and duties of a navigator." The department also removed a reference to the adopted rules because all activities and duties described in them are based on statutory activities and duties; added a citation to the specific subsection in 42 USC §18031, which sets out duties of a navigator; added a citation to Insurance Code §4154.051(a), which is the source of the duties listed in the definition; and revised the list of duties in the definition to include only those most relevant to the need for regulation of navigators.

As adopted, the rules do not require 40 hours of additional state-specific training. Instead, the adopted rules attribute 20 hours of federal education to the initial training requirement, and require 20 hours of state-specific training, for a total of 40 hours of training, with the specific requirements being contained in adopted §19.4008. The department determined that additional training was necessary based on input received during the department's review of the federal regulations and the rulemaking process. Several navigator entities in Texas have independently decided that federal training requirements are insufficient and either employ individuals with specialized experience to serve as navigators or provide extra training beyond what is required by the federal government. To ensure the qualification of all navigators in Texas, the department incorporated requirements for additional training into the adopted rules.

Cost estimates in the rule proposal for navigator training vary between \$200 and \$800 dollars because the estimates were based on a cost range of \$5 to \$20 dollars per hour for 40 hours of state-specific training. In response to concerns in this and other similar comments about training costs and the amount of training required, the department has revised this requirement in the adopted rules from what the department proposed. As adopted, the rules only require 20 hours of state-specific training, which

reduces the potential cost range for training to \$100 to \$400 dollars.

In addition, navigator entities that choose to develop their own training courses and have them certified by the department can reduce their cost more. Under 28 TAC Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Education Programs, and Certification Courses), the cost to become an approved course provider is \$50, and there is no cost associated with the certification of a preregistration course except for the cost to develop the materials. Based on this, a navigator entity's cost to provide initial training for individual navigators employed by or associated with it could be as low as \$50 plus the cost of training materials and supplies, regardless of the number of individual navigators employed by or associated with the navigator entity.

The intent of the financial responsibility requirement is to protect individuals against wrongful acts, misrepresentations, errors, omissions, or negligence of the navigator entity, its employees, or navigators associated or employed with the navigator entity. This is a necessary accountability standard for regulation of navigators that is lacking in federal standards. The department acknowledges that demonstrating compliance with the financial responsibility requirement may result in costs for navigator entities. In response to this and other similar comments regarding the potential cost associated with the requirement, the department has reduced the surety bond amount included in §19.4010(a)(1) to \$25,000, which would reduce the cost of compliance for any navigator entity that selected that option for demonstrating financial responsibility.

The department estimates that the cost to obtain a state-issued identification card is \$16 and that the identification would expire on the individual's birth date after six years. The department expects that many individual navigators already possess valid identification, and that the cost of obtaining identification is a reasonable and necessary requirement in order to protect consumers. The department acknowledges the importance of outreach to all communities, including those with limited English-speaking skills.

Comment: A commenter said the federal navigator training requirements should be sufficient and opposed the additional state training requirements under the proposed rules.

Agency Response: The department disagrees with the comment. The department believes the adopted rules will provide Texas consumers protection by ensuring that navigators in Texas are sufficiently trained to provide assistance.

Comment: A commenter submitted a written comment noting that one in four Texans is uninsured. The commenter said Texas was ridiculed nationally as the state with the most uninsured people. The commenter asked why the department would impose regulations on access to information in acquiring health care through the ACA and that these regulations would lead to even more ridicule of the state.

Agency Response: In response to this comment and similar comments, the department agrees to make a revision to the rule as adopted to clarify the provision the commenter appears to address.

The commenter appears to address proposed §19.4014(a)(5) when expressing concern that the proposed rule would prevent a navigator from helping a consumer understand and compare benefits to make an informed insurance choice. As proposed,

§19.4014(a)(5) would prohibit a navigator from "provid[ing] advice regarding substantive benefits or comparative benefits of different health benefit plans." The intent of this provision was not to prevent navigators from discussing the coverage available under plans, but rather to prohibit navigators from making blanket statements regarding which plan is more beneficial. The choice of which plan is better should be made by the consumer, not the navigator. This prohibition is based on Insurance Code §4154.101(a)(4), which prohibits a navigator who is not licensed under Insurance Code Chapter 4054 (relating to Life, Accident, and Health Insurance Agents), from offering advice or advising consumers on which qualified health plan available through a health benefit exchange is preferable.

However, based on this comment and statements made by other commenters, it is apparent that proposed §19.4014(a)(5) needs to be revised for clarity. In the rule as adopted, the department revised the provision to track the language of Insurance Code §4154.101(a)(4). In addition, the adopted text follows this revised provision with a subsection that tracks Insurance Code §4154.101(b), which says a navigator is not prohibited under Insurance Code §4154.101 from "providing information and services consistent with the mission of a navigator."

Comments: A commenter stated that in more than 20 years of service in helping clients apply for health insurance, the commenter had never encountered the need for most of the provisions in the proposed rules.

The commenter expressed the belief that if the only people who could be navigators were those attached to an organization receiving a navigator grant, then there was no need for those organizations or individuals to incur the additional time and expense of registering with the state. The commenter said navigators were not selling insurance and should not have to register like insurance agents. The commenter contended that fingerprinting was not necessary and provided an undue administrative and financial burden on both the employee and the employer. The commenter further said that employer-conducted criminal background checks provided sufficient information to determine if a candidate was appropriate for employment, and that navigator entities did not have funding for fingerprinting. The commenter said that navigator entities should not have to designate a responsible party who would submit to fingerprinting nor should individual navigators be fingerprinted. The commenter said the department should limit its concerns to navigators as defined in the ACA, which are those individuals attached to navigator entities.

Agency Response: The department does not agree that the only people who can be navigators are those attached to an organization receiving a navigator grant. The proposed rules would apply to more than just recipients of federal grants under the ACA.

This applicability is consistent with the definition for "navigator" contained in SB 1795, which says, "navigator means an individual or entity performing the activities and duties of a navigator as described by 42 USC §18031." Application of the rules consistent with the SB 1795 definition of "navigator" means the adopted registration process will apply to those who want to perform the activities and duties of a navigator as described by 42 USC §18031, but who did not apply for, or applied for but did not receive, a federal navigator grant. One such organization has contacted the department several times since passage of the ACA, asking how it could receive authorization to act as a navigator.

The availability of more than just grant-recipient navigators in Texas will broaden the pool of navigators able to help Texans find and apply for health coverage under the exchange, which is consistent with the purpose of SB 1795 as stated in Insurance Code Chapter 4154: "[T]he purpose of this chapter is to provide a state solution to ensure that Texans are able to find and apply for affordable health coverage under any federally run health benefit exchange, while helping consumers in this state." The department determined that the availability of more navigators in Texas would increase the likelihood that members of the uninsured population in this state would have assistance in finding health insurance through the exchange.

Application of the rules consistent with the SB 1795 definition of "navigator" also means that the standards adopted under the rules will apply equally to grant recipient and non-grant recipient navigators. For example, navigators with the organization that has contacted the department will need to have the same amount of education and training as navigators with any of the federal grant recipients in Texas. This will create a level playing field for all navigators in the state, and will help ensure that consumers receive enrollment assistance in a health benefit exchange from a qualified navigator.

The department does not agree that the federal regulations alone are sufficient. The department determined that additional requirements were necessary based on a thorough review of standards in federal regulations, as required by SB 1795; input from stakeholders in Texas; and conferences with HHS staff. Notably, several navigator entities in Texas have independently decided that federal requirements are insufficient. They perform their own background checks, employ individuals with specialized experience to serve as navigators, and provide extra training beyond what is required by the federal regulations. To ensure consistent and uniform qualification of all navigators in Texas and meet the minimum standards established in Insurance Code §4154.051(c), the department has incorporated standards for additional vetting and training into the adopted rules.

As proposed, the terms "individual navigator" and "navigator entity" were based on the statutory definition of "navigator" in Insurance Code §4154.002(3), which defines "navigator" as "an individual or entity performing the activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." Rather than using the words "activities and duties of a navigator" in the definitions for "individual navigator" and "navigator entity," the department used the defined term "navigator services." The defined term "navigator services" was intended to capture "activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." However, some commenters did not understand that Insurance Code §4154.002(3) defines the term "navigator" by referencing the "activities and duties of a navigator," and use of the department term intended to capture that phrase resulted in further confusion.

To avoid confusion regarding the statutory basis for the definition of "individual navigator" and "navigator entity," the department has revised the definitions of the terms to remove the defined term "navigator services" and incorporate the statutory phrase "activities and duties of a navigator." In addition, the department has revised the definitions of these terms to include a citation to the specific subsection in 42 USC §18031 that sets out the duties of a navigator.

The rules as adopted do not include any registration fees for navigators. However, the department disagrees with the comment

that fingerprinting and criminal background checks are not necessary and would constitute an undue burden or expense.

Requiring a certain number of hours of training as a prerequisite to a qualification is consistent with the requirements for navigators in other states. It also reflects the practice of several of the federal navigator grant recipients in Texas that the department spoke with in preparing the proposed rules. Many navigator entities employ individuals with additional training experience or require that those they hire as navigators receive training beyond what is required by the federal regulations. The department believes that the rules as adopted will ensure that navigators are qualified while providing them enough flexibility to choose the course they take to meet the preregistration education requirements.

Cost estimates in the rule proposal for navigator training vary between \$200 and \$800 dollars because the estimates were based on a cost range of \$5 to \$20 dollars per hour for 40 hours of state-specific training. In response to concerns in this and other similar comments about training costs and the amount of training required, the department has revised this requirement in the adopted rules from what the department proposed. As adopted, the rules only require 20 hours of state-specific training, which reduces the potential cost range for training to \$100 to \$400 dollars.

In addition, navigator entities that choose to develop their own training courses and have them certified by the department can reduce their cost more. Under 28 TAC Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Education Programs, and Certification Courses), the cost to become an approved course provider is \$50, and there is no cost associated with the certification of a preregistration course except for the cost to develop the materials. Based on this, a navigator entity's cost to provide initial training for individual navigators employed by or associated with it could be as low as \$50 plus the cost of training materials and supplies, regardless of the number of individual navigators employed by or associated with the navigator entity.

Comment: A commenter submitted a written comment stating that the purpose of the proposed rules was to restrict navigators from helping people access affordable and reliable health insurance.

Agency Response: The department disagrees with the comment. The adopted rules will not prevent navigators from assisting consumers in Texas; the standards established by the rules will provide consumer protection by requiring background checks to ensure that felons cannot become navigators, ensuring that individual navigators in Texas are sufficiently trained, requiring navigator entities to maintain proof of financial responsibility, requiring that navigators identify themselves, and preventing entities and individuals who are not navigators from deceptively identifying themselves as navigators.

Comment: A commenter submitted a written comment on the proposed rule. The commenter cited the purpose statement in Insurance Code §4154.001 that Insurance Code Chapter 4154 is intended to "ensure that Texans are able to find and apply for affordable health coverage under any federally run health benefit exchange, while helping consumers in this state." The commenter said the proposed rules go beyond the goal of consumer protection and will prevent Texans from accessing affordable health insurance coverage.

The commenter suggested that the department provide a searchable list of registered and verified navigators on the department's website and a toll-free phone number that consumers without internet access could call to find a navigator.

The commenter asked that the department explain why the federally mandated navigator rules are insufficient and that the department provide dates and persons of authority present where insufficiencies were determined, as well as any public comment, transcript, or recording of why the federal regulations were deemed insufficient.

The commenter said that the definitions for "enrollment assistance in a health benefit exchange," "individual navigator," and "navigator services" were vague and that it was unclear whether they would apply to individuals helping family members or friends. The commenter asked that the department elaborate on the definitions and any limitations or exclusions. The commenter also asked how the definitions would apply to navigators certified by the federal exchange and how the definition of "navigator" in the rule differed from federal regulations.

The commenter also addressed training requirements in the proposed rules, asking that the department justify, hour-for-hour, why 40 hours of additional in-state training is required. The commenter asked that the department explain why the federal training is insufficient for Texas navigators.

The commenter addressed costs, stating that the possible overall annual cost for an individual navigator is approximately \$1,200. The commenter asked why estimated costs for training vary from \$200 to \$800, whether a compliance cost of \$1,200 would be required each year, and what justification there was for these costs when they apply to a nonprofit or volunteer organization. The commenter said that a small navigator entity might end up being required to pay over \$30,000 in compliance costs and asked why this was not addressed in the department's fiscal note for TDI. The commenter also asked why such costs would not be considered an economic impact on a small or micro business.

The commenter also addressed navigator identification requirements and privacy requirements and standards. The commenter noted proposed §19.4012(b) and (c) require a navigator to provide identification to a consumer, and asked if this means a navigator must provide personal information to consumers.

The commenter addressed the privacy requirements in §19.4013. The commenter asks whether the statutes and rules listed in the section are a reference to the Health Insurance Portability and Accountability Act or a Texas-specific privacy law, or other federal or state laws.

The commenter concludes by asking why a navigator needs to show a state-issued identification card and whether the department intends to issue state-issued identification that does not include a navigator's personal information, and why §19.4013 references other administrative code sections.

Agency Response: The department disagrees that the rules as proposed go beyond consumer protection. While the department agrees that providing information to the public regarding navigators has merit, without adopted rules, the department is unable to provide the information because it does not have this information. Prior to adoption of these rules, navigator entities and individual navigators are not required to provide the department this information. However, under the adopted rules navigators

in Texas will register with the department, so the department will be able to make such information available to the public.

The details of the insufficiency of federally mandated navigator regulations are addressed in the preamble to this rule adoption order under the heading "Commissioner determination regarding sufficiency of federal standards," and the department refers the commenter to that portion of the preamble for the requested explanation. Additional details regarding the basis for the commissioner's determination are also included throughout the preamble of this adoption order.

In response to this and other commenters, the department has revised the definitions for the terms "individual navigator" and "navigator entity."

As proposed, the terms "individual navigator" and "navigator entity" were based on the statutory definition of "navigator" in Insurance Code §4154.002(3), which defines "navigator" as "an individual or entity performing the activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." Rather than using the words "activities and duties of a navigator" in the definitions for "individual navigator" and "navigator entity," the department used the defined term "navigator services." The defined term "navigator services" was intended to capture "activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." However, some commenters did not understand that Insurance Code §4154.002(3) defines the term "navigator" by referencing the "activities and duties of a navigator," and use of the department term intended to capture that phrase resulted in further confusion.

To avoid confusion regarding the statutory basis for the definition of "individual navigator" and "navigator entity," the department has revised the definitions of the terms to remove the defined term "navigator services" and incorporate the statutory phrase "activities and duties of a navigator." In addition, the department has revised the definitions of these terms to include a citation to the specific subsection in 42 USC §18031 that sets out the duties of a navigator.

In adopted §19.4003(f), the department has clarified the rule's applicability to state that it does not apply to "an individual who only provides navigator services to a person or persons related to the individual within the third degree by consanguinity or within the second degree by affinity, as determined under Government Code Chapter 573, Subchapter B."

Applicability of the rules to specific individuals and the need for the department to take action under the rules depends on the facts of the situation. This is the case for anyone regulated by the department, not just navigators. In most instances it may be clear that someone is performing an act regulated by the department, but at other times it may not be apparent if someone is acting as an agent or someone is performing the business of insurance. In those instances, the department must look closely at the facts of the case, and may even need to proceed to a contested case hearing to conclusively determine if an act is regulated by the department.

For example, there may not be a role for the department in the interaction of an individual commenter with an individual's neighbor. If the individual is not purporting to be a navigator and the individual is not taking so many acts that the individual's neighbor believes the individual is a navigator, or is relying on the qualifications of the individual as a navigator, the rules may not be applicable to the individual. However, in other instances someone

might deceptively pose as a navigator in an attempt to access a neighbor's private information, or someone may honestly want to act as a navigator to assist neighbors, but not actually understand how to provide such assistance. In those situations, the rules may be applicable and may be necessary to ensure consumer protection.

As adopted, the rules do not require 40 hours of additional state-specific training. Instead, the adopted rules attribute 20 hours of federal education to the initial training requirement, and require 20 hours of state-specific training, for a total of 40 hours of training, with the specific requirements being contained in adopted §19.4008. The department determined that additional training was necessary based on input received during the department's review of the federal regulations and the rulemaking process. Several navigator entities in Texas have independently decided that federal training requirements are insufficient and either employ individuals with specialized experience to serve as navigators or provide extra training beyond what is required by the federal government. To ensure the qualification of all navigators in Texas, the department incorporated requirements for additional training into the adopted rules.

Cost estimates in the rule proposal for navigator training vary between \$200 and \$800 dollars because the estimates were based on a cost range of \$5 to \$20 dollars per hour for 40 hours of state-specific training. In response to concerns in this and other similar comments about training costs and the amount of training required, the department has revised this requirement in the adopted rules from what the department proposed. As adopted, the rules only require 20 hours of state-specific training, which reduces the potential cost range for training to \$100 to \$400 dollars.

In addition, navigator entities that choose to develop their own training courses and have them certified by the department can reduce their cost more. Under 28 TAC Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Education Programs, and Certification Courses), the cost to become an approved course provider is \$50, and there is no cost associated with the certification of a preregistration course except for the cost to develop the materials. Based on this, a navigator entity's cost to provide initial training for individual navigators employed by or associated with it could be as low as \$50 plus the cost of training materials and supplies, regardless of the number of individual navigators employed by or associated with the navigator entity.

In response to this comment and similar comments, expressing concerns regarding the registration fee, the department agrees to withdraw the proposed section that would establish registration and renewal fees and not include it in the adopted rule.

The department did not address compliance costs for navigators in the fiscal note for SB 1795 for several reasons. First, a fiscal note on a bill only addresses costs to the agency to implement a bill. The department generally does not pay compliance costs for entities or individuals who seek an authorization issued by the department, so the department would not include those costs in a fiscal note. In addition, there were no federal navigator regulations in place at the time the fiscal note was drafted, and no department determination that the federal regulations were insufficient, so it was not clear what, if any, compliance requirements would be adopted under SB 1795.

The department confirms that an individual navigator must provide proof of identification to consumers the individual navigator

assists. Consumers will be able to view any information that is on the identification the individual navigator presents. The department does not anticipate issuing identification to individual navigators.

As stated in adopted §19.4013, the citations listed in that section refer to Insurance Code Chapter 601, which relates to Privacy; Insurance Chapter 602, which relates to Privacy of Health Information; and 28 TAC Chapter 22, which also relates to Privacy. These chapters establish privacy requirements that apply to all entities and individuals regulated by the department. Some of the provisions of these chapters incorporate federal privacy requirements into Texas statutes and regulations.

Comment: A commenter submitted a written comment on the rule proposal. The commenter stated that those subject to the rules should have at least three months or until November 15, 2014, the start of the next open enrollment period, to come into compliance because these costs were not included in the current year's budgets required for the federal grant recipients. The commenter expressed concern that navigators would incur significant costs to comply with the proposed rule and future federal funding would not be released sooner than mid to late August 2014.

The commenter said that 20 to 30 hours of federal navigator training, the standard operating procedure manual, and the certification exam provide navigators with the necessary resources and knowledge to carry out their duties under federal and state law and the additional 40 hours of state-required training was excessive.

The commenter went on to state the hours would be better spent providing services to uninsured Texans. If additional training was required, the commenter encouraged the department to adopt the free training that already exists for Texas Medicaid and privacy through the Health and Human Service Commission's Community Partner Program, which would reduce the cost to navigator entities. The commenter also said that it was essential that all training and examination material be available in Spanish and English, especially since the examination would be timed. The commenter went on to indicate that many of the individual navigators that work for the commenter were bilingual with English as their second language.

The commenter raised concerns regarding the prohibition on providing advice regarding substantive benefits or comparative benefits of different health plans. The commenter stated since navigators are required by 45 CFR §155.210(e) to provide fair, accurate, and impartial information to consumers and facilitate the selection of Marketplace health plans, it was essential that navigators explain and compare the features of health plans to consumers. The commenter further stated that navigators must be able to provide this type of information to consumers since many of those that are being assisted are unfamiliar with insurance and have low health insurance literacy.

The commenter suggested that the phrase "provide advice" be clarified in order to ensure that navigators can provide their required functions.

The commenter estimated the cost of compliance for the first year to navigator entities and individual navigators to be \$957 to \$1,457 and \$331 to \$992, respectively. The total cost for this commenter to comply with the proposed requirements would be \$6,915 to \$19,313, or 20 percent to 55 percent of a full-time navigator. The commenter stated that these were funds that would be paid to the state instead of assisting Texas consumers.

The commenter indicated that it supports fostering professional, accountable navigators, and consumer protections and that, in general, the federal standards and training for navigators provide those. The commenter further said that its support of the federal standards and training did not mean standards cannot be raised to better protect Texas consumers. For example, the commenter said background checks were a good idea. However, the commenter was concerned with the scope of the oversight envisioned by the department, which could duplicate federal requirements or existing practices, create costs that would be unnecessarily burdensome, and generally exceed what is reasonable for a nonlicensing registration program. The commenter was also concerned about the ability of citizens to help their friends and family without violating state law.

Agency Response: The department disagrees with the commenter's suggestion to delay requirements for navigators until the next federal grant cycle awards are made, because such a delay would be inconsistent with SB 1795.

The effective date of SB 1795 was September 1, 2013. As of that date the commissioner was charged with determining the sufficiency of federal standards for navigators, working with HHS to improve insufficient federal standards, and adopting state standards if the federal standards remained insufficient after a reasonable interval. The next cycle of federal grant awards will be made on or around August 15, 2014. This is nearly a full year after the effective date of SB 1795. Had the legislature intended for the department to wait a year before implementing standards adopted under SB 1795, it could have put included such a limitation in SB 1795.

The department declines to create an exception to compliance with the adopted standards for navigators working toward compliance, because it would result in uncertainty regarding which standards apply to which navigators. Such an uncertainty is one of the insufficiencies the department has identified in federal standards, and is working to correct with the adopted rules.

The department does not agree that navigator entities who are federal grant recipients will need to obtain federal permission to deviate from their grant budgets based on the compliance costs of this rule. According to information the department received from HHS, navigator grant budgets only require amendments for changes in costs in excess of a 25 percent deviation. The department does not believe the compliance costs of the rules will approach that threshold, especially in light of the changes to reduce costs that the department has made in response to comments.

The department anticipates many entities and individuals will submit registration forms in the weeks before the applicability date of the adopted rules, and will assign staff as appropriate to ensure fast and efficient processing of applications.

Ultimately, the department believes that the need to ensure that the individuals who interact with consumers are qualified to serve as navigators necessitates application of the adopted rules in timeframe proposed.

As adopted, the rules do not require 40 hours of additional state-specific training. Instead, the adopted rules attribute 20 hours of federal education to the initial training requirement, and require 20 hours of state-specific training, for a total of 40 hours of training, with the specific requirements being contained in adopted §19.4008. The department determined that additional training was necessary based on input received during the department's

review of the federal regulations and the rulemaking process. Several navigator entities in Texas have independently decided that federal training requirements are insufficient and either employ individuals with specialized experience to serve as navigators or provide extra training beyond what is required by the federal government. To ensure the qualification of all navigators in Texas, the department incorporated requirements for additional training into the adopted rules.

Cost estimates in the rule proposal for navigator training vary between \$200 and \$800 dollars because the estimates were based on a cost range of \$5 to \$20 dollars per hour for 40 hours of state-specific training. In response to concerns in this and other similar comments about training costs and the amount of training required, the department has revised this requirement in the adopted rules from what the department proposed. As adopted, the rules only require 20 hours of state-specific training, which reduces the potential cost range for training to \$100 to \$400 dollars.

In addition, navigator entities that choose to develop their own training courses and have them certified by the department can reduce their cost more. Under 28 TAC Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Education Programs, and Certification Courses), the cost to become an approved course provider is \$50, and there is no cost associated with the certification of a preregistration course except for the cost to develop the materials. Based on this, a navigator entity's cost to provide initial training for individual navigators employed by or associated with it could be as low as \$50 plus the cost of training materials and supplies, regardless of the number of individual navigators employed by or associated with the navigator entity.

In response to this comment and similar comments, expressing concerns regarding the registration fee, the department agrees to withdraw the proposed section that would establish registration and renewal fees and not include it in the adopted rule.

The commenter appears to address proposed §19.4014(a)(5) when expressing concern that the proposed rule would prevent a navigator from helping a consumer understand and compare benefits to make an informed insurance choice. As proposed, §19.4014(a)(5) would prohibit a navigator from "provid[ing] advice regarding substantive benefits or comparative benefits of different health benefit plans." The intent of this provision was not to prevent navigators from discussing the coverage available under plans, but rather to prohibit navigators from making blanket statements regarding which plan is more beneficial. The choice of which plan is better should be made by the consumer, not the navigator. This prohibition is based on Insurance Code §4154.101(a)(4), which prohibits a navigator who is not licensed under Insurance Code Chapter 4054 (relating to Life, Accident, and Health Insurance Agents), from offering advice or advising consumers on which qualified health plan available through a health benefit exchange is preferable.

However, based on this comment and statements made by other commenters, it is apparent that proposed §19.4014(a)(5) needs to be revised for clarity. In the rule as adopted, the department revised the provision to track the language of Insurance Code §4154.101(a)(4). In addition, the adopted text follows this revised provision with a subsection that tracks Insurance Code §4154.101(b), which says a navigator is not prohibited under Insurance Code §4154.101 from "providing information and services consistent with the mission of a navigator."

The standards included in the adopted rules are those considered necessary by the department to implement Chapter 4154. Since one of the insufficiencies identified by the commissioner with the federal regulations is that they only apply to federal grant recipients, state based rules are necessary to have consistent standards for all entities and individuals providing navigator services in Texas. If federal grant recipients are already complying with the state requirements due to similar federal regulations, there would be no additional cost to comply with the state rules.

In adopted §19.4003(f), the department has clarified the rule's applicability to state that it does not apply to "an individual who only provides navigator services to a person or persons related to the individual within the third degree by consanguinity or within the second degree by affinity, as determined under Government Code Chapter 573, Subchapter B."

Applicability of the rules to specific individuals and the need for the department to take action under the rules depends on the facts of the situation. This is the case for anyone regulated by the department, not just navigators. In most instances it may be clear that someone is performing an act regulated by the department, but at other times it may not be apparent if someone is acting as an agent or someone is performing the business of insurance. In those instances, the department must look closely at the facts of the case, and may even need to proceed to a contested case hearing to conclusively determine if an act is regulated by the department.

For example, there may not be a role for the department in the interaction of an individual with the individual's neighbor. If the individual is not purporting to be a navigator and the individual is not taking so many acts that the commenter's neighbor believes the commenter is a navigator, or is relying on the qualifications of the individual as a navigator, the rules may not be applicable to the individual. However, in other instances someone might deceptively pose as a navigator in an attempt to access a neighbor's private information, or someone may honestly want to act as a navigator to assist neighbors, but not actually understand how to provide such assistance. In those situations, the rules may be applicable and may be necessary to ensure consumer protection.

Comment: In written comments and in testimony during the public hearing on January 6, 2014, a commenter said that the purpose of SB 1795 was to give the state the flexibility it needs to regulate healthcare navigators while making it easier, not harder, for citizens to get health insurance. The commenter supported the rules that require fingerprinting, background checks, bar individuals with certain criminal histories, and prohibit charging consumers for providing information about health coverage affordability or concepts.

The commenter said the rules did not provide individuals or entities with a reasonable amount of time to meet the new requirements for navigator registration guidelines and recommended the department push back the registration deadline by two months to avoid shutting down navigators when they are most needed and preventing Texans from taking advantage of the federal exchange prior to the March 31st deadline for open enrollment.

The commenter said the applicability of the proposed rules was too broad and confusing because it was unclear who the rules applied to and who was required to register as a navigator. The commenter recommended the department amend the rules to apply only to federally-recognized navigators so that they would

not appear to apply to a human resources person that enrolls his company's employees in coverage through the Small Business Health Options Program or the navigators defined under Government Code Chapter 531.

The commenter said the new costs imposed on navigators and navigator entities were excessive because the first year cost could reach almost \$1,200 per navigator. The commenter asks how navigators would be paid since they cannot charge for their services and reminded the department that federal grant monies would likely be diverted for the costs, which would mean fewer navigators would be available to help Texas citizens find affordable health coverage. The commenter questioned the anticipated cost of training and how it would be administered. The commenter said that the Health and Human Services Commission offers training at no cost, and the department should use its model for cost-effective training. The commenter recommended the department lower the cost of compliance with the rules and ensure training is free of charge.

The commenter thinks the training requirements under the proposed rules are unnecessary and arbitrary because adjuster duties under Insurance Code §4101.001 are different from the duties of navigators in proposed 28 TAC §19.4002. The commenter recommended that the training requirements be amended to supplement the federal training rather than produce a new curriculum with redundancies. The commenter asked that the department provide full justification for each new component of the training, including how it arrived at the length of time to complete the component and that it provide the training free of charge.

The commenter asked that while the department considers these rules and incorporates stakeholder feedback, it remember the 6 million uninsured Texas citizens - which is the highest rate of uninsured in the nation. The commenter said there are Texans who are not getting the care they need and are skipping a trip to the doctor because they cannot afford it. The commenter said they are not getting preventive care, which will likely cost them a lot more in the long run, and cost all of us more as our local tax dollars pick up the cost for uncompensated care. The commenter said some uninsured may have had health coverage but lost it when they lost or changed jobs, and some have never had coverage and do not know how to sign up.

The commenter said navigators are designed to help these individuals get the coverage they need for the price they can afford, and the deadline for open enrollment leaves a limited amount of time to get people signed up. The commenter said those who would qualify for subsidies will not be eligible to receive that assistance if they are not signed up by the deadline. The commenter said that the commenter had recently helped enroll a family through the federal health exchange and asked whether this would have required registration with the department if it had been done after the deadline in the proposed rules. The commenter said that many Texans do not have a tech-savvy family member to patiently explain the website and some in rural Texas or impoverished households may not have Internet access. The commenter said those consumers are why navigators are needed. For that reason the commenter asked that the department to revise the proposed rules to set the navigators up for success rather than defeat. The commenter asked the department to determine what rules are just right to help Texans gain access and provide consumer protections.

Agency Response: The department agrees that privacy protection and laws are important and appreciates the support

for its requirements concerning fingerprinting, background checks, barring individuals with certain criminal histories, and the prohibition on charging consumers for providing information about health coverage affordability or concepts. Insurance Code §4154.051(c)(3) specifically requires the department's rules to provide that a navigator may not have been convicted of a felony.

The effective date of the rule will be February 10, 2014. This provides three weeks before the date navigators need to be registered. However, the department provided notice of the commissioner's adoption of these rules on the department's website on January 21, 2014. Nothing prevents a navigator from submitting an application for registration prior to the effective date of the rule, so navigators have an additional 20 days to prepare for compliance with the registration requirement before the effective date. In addition, the adopted rules do not require that navigators complete and provide proof of the department-certified training required by the adopted rules until May 1, 2014. Completing the necessary 20 hours of state-specific training will be the most time-consuming element of the registration process, but under adopted §19.4008(g) navigators do not need to complete or provide proof of completion of this training until May 1, which is 30 days after the end of the open enrollment period.

The department believes the need for the consumer protections included in the adopted rule warrants the March 1 applicability date, and that allowing a two-month delay in showing proof of state-specific training provides sufficient time for navigators to register with the department, obtain the required training, and continue to provide assistance to consumers throughout the current open enrollment period.

As proposed, the terms "individual navigator" and "navigator entity" were based on the statutory definition of "navigator" in Insurance Code §4154.002(3), which defines "navigator" as "an individual or entity performing the activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." Rather than using the words "activities and duties of a navigator" in the definitions for "individual navigator" and "navigator entity," the department used the defined term "navigator services." The defined term "navigator services" was intended to capture "activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." However, some commenters did not understand that Insurance Code §4154.002(3) defines the term "navigator" by referencing the "activities and duties of a navigator," and use of the department term intended to capture that phrase resulted in further confusion.

To avoid confusion regarding the statutory basis for the definition of "individual navigator" and "navigator entity," the department has revised the definitions of the terms to remove the defined term "navigator services" and incorporate the statutory phrase "activities and duties of a navigator." In addition, the department has revised the definitions of these terms to include a citation to the specific subsection in 42 USC §18031 that sets out the duties of a navigator.

The department agrees with the commenter that the rule as proposed could potentially apply to human resource personnel assisting employees enroll in the Small Business Health Options Program. The department does not believe it is necessary for the department to regulate such an act, so has revised §19.4003 to include a new subsection (e) that says, "This subchapter does not apply to the human resource personnel of a business using

the Small Business Health Options Program marketplace to provide qualified health plans to employees of the business."

As adopted, the rules do not require 40 hours of additional state-specific training. Instead, the adopted rules attribute 20 hours of federal education to the initial training requirement, and require 20 hours of state-specific training, for a total of 40 hours of training, with the specific requirements being contained in adopted §19.4008. The department determined that additional training was necessary based on input received during the department's review of the federal regulations and the rulemaking process. Several navigator entities in Texas have independently decided that federal training requirements are insufficient and either employ individuals with specialized experience to serve as navigators or provide extra training beyond what is required by the federal government. To ensure the qualification of all navigators in Texas, the department incorporated requirements for additional training into the adopted rules.

Cost estimates in the rule proposal for navigator training vary between \$200 and \$800 dollars because the estimates were based on a cost range of \$5 to \$20 dollars per hour for 40 hours of state-specific training. In response to concerns in this and other similar comments about training costs and the amount of training required, the department has revised this requirement in the adopted rules from what the department proposed. As adopted, the rules only require 20 hours of state-specific training, which reduces the potential cost range for training to \$100 to \$400 dollars.

In addition, navigator entities that choose to develop their own training courses and have them certified by the department can reduce their cost more. Under 28 TAC Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Education Programs, and Certification Courses), the cost to become an approved course provider is \$50, and there is no cost associated with the certification of a preregistration course except for the cost to develop the materials. Based on this, a navigator entity's cost to provide initial training for individual navigators employed by or associated with it could be as low as \$50 plus the cost of training materials and supplies, regardless of the number of individual navigators employed by or associated with the navigator entity.

In adopted §19.4003(f), the department has clarified the rule's applicability to state that it does not apply to "an individual who only provides navigator services to a person or persons related to the individual within the third degree by consanguinity or within the second degree by affinity, as determined under Government Code Chapter 573, Subchapter B."

Applicability of the rules to specific individuals and the need for the department to take action under the rules depends on the facts of the situation. This is the case for anyone regulated by the department, not just navigators. In most instances it may be clear that someone is performing an act regulated by the department, but at other times it may not be apparent if someone is acting as an agent or someone is performing the business of insurance. In those instances, the department must look closely at the facts of the case, and may even need to proceed to a contested case hearing to conclusively determine if an act is regulated by the department.

As proposed, the terms "individual navigator" and "navigator entity" were based on the statutory definition of "navigator" in Insurance Code §4154.002(3), which defines "navigator" as "an individual or entity performing the activities and duties of a nav-

igator as described by 42 USC §18031 or any regulation enacted under that section." Rather than using the words "activities and duties of a navigator" in the definitions for "individual navigator" and "navigator entity," the department used the defined term "navigator services." The defined term "navigator services" was intended to capture "activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." However, some commenters did not understand that Insurance Code §4154.002(3) defines the term "navigator" by referencing the "activities and duties of a navigator," and use of the department term intended to capture that phrase resulted in further confusion.

To avoid confusion regarding the statutory basis for the definition of "individual navigator" and "navigator entity," the department has revised the definitions of the terms to remove the defined term "navigator services" and incorporate the statutory phrase "activities and duties of a navigator." In addition, the department has revised the definitions of these terms to include a citation to the specific subsection in 42 USC §18031 that sets out the duties of a navigator.

To ensure clarity regarding the statutory basis for the term "navigator services," the department has revised that term to use the statutory phrase "activities and duties of a navigator." The department also removed a reference to the adopted rules because all activities and duties described in them are based on statutory activities and duties; added a citation to the specific subsection in 42 USC §18031, which that sets out duties of a navigator; added a citation to Insurance Code §4154.051(a), which is the source of the duties listed in the definition; and revised the list of duties in the definition to include only those most relevant to the need for regulation of navigators.

Comment: A commenter submitted a written comment saying that the federal ACA training requirements are rigorous. The commenter said the commenter had volunteered with a navigator entity that, in addition to the federal training, provided HIPAA training, and required a criminal background check. The commenter expressed concern that the additional requirements of the proposed regulations would not provide additional protection to consumers, but would add unnecessary cost. The commenter also said that training should not be addressed in terms of hours, but rather in knowledge and skill outcomes.

Agency Response: The department does not believe that the federal regulations alone are sufficient. The department determined that additional requirements were necessary based on a thorough review of standards in federal regulations, as required by SB 1795; input from stakeholders in Texas; and conferences with HHS staff. Notably, several navigator entities in Texas have independently decided that federal requirements are insufficient. They perform their own background checks, employ individuals with specialized experience to serve as navigators, and provide extra training beyond what is required by the federal regulations. To ensure consistent and uniform qualification of all navigators in Texas and meet the minimum standards established in Insurance Code §4154.051(c), the department has incorporated standards for additional vetting and training into the adopted rules.

As adopted, the rules do not require 40 hours of additional state-specific training. Instead, the adopted rules attribute 20 hours of federal education to the initial training requirement, and require 20 hours of state-specific training, for a total of 40 hours of training, with the specific requirements being contained in adopted §19.4008. The department determined that additional training was necessary based on input received during the department's

review of the federal regulations and the rulemaking process. Several navigator entities in Texas have independently decided that federal training requirements are insufficient and either employ individuals with specialized experience to serve as navigators or provide extra training beyond what is required by the federal government. To ensure the qualification of all navigators in Texas, the department incorporated requirements for additional training into the adopted rules.

Cost estimates in the rule proposal for navigator training vary between \$200 and \$800 dollars because the estimates were based on a cost range of \$5 to \$20 dollars per hour for 40 hours of state-specific training. In response to concerns in this and other similar comments about training costs and the amount of training required, the department has revised this requirement in the adopted rules from what the department proposed. As adopted, the rules only require 20 hours of state-specific training, which reduces the potential cost range for training to \$100 to \$400 dollars.

In addition, navigator entities that choose to develop their own training courses and have them certified by the department can reduce their cost more. Under 28 TAC Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Education Programs, and Certification Courses), the cost to become an approved course provider is \$50, and there is no cost associated with the certification of a preregistration course except for the cost to develop the materials. Based on this, a navigator entity's cost to provide initial training for individual navigators employed by or associated with it could be as low as \$50 plus the cost of training materials and supplies, regardless of the number of individual navigators employed by or associated with the navigator entity.

Comment: A commenter submitted a written comment on the rule proposal. The commenter said that the rules proposed by the department pursuant to SB 1795 would go far beyond the bill's goal of consumer protection and introduce extraneous and burdensome regulations that would have the effect of keeping many of the 6 million uninsured Texans from accessing affordable insurance coverage. The commenter said that by not expanding Medicaid in the past session, the state had already lost its chance to significantly reduce the number of uninsured Texans. The commenter requested information related to the "good faith" effort to work in cooperation with HHS required by Insurance Code §4154.041(b).

The commenter asked how the department determined 40 hours as the length of additional training time for navigators, bringing total preregistration training requirements under the proposed rule to 60-70 hours, which was higher than other states. The commenter asked for documents prepared by the department to develop the training requirements and an explanation of the disparity in the training time requirement between the navigators and the people who perform a similar advisory duty under the Community Partner Program or Health Insurance Counseling and Advocacy Program.

The commenter said the SB 1795 fiscal note indicated that costs could be absorbed within existing agency resources; however, the rules could require \$1,200 for each navigator to register. The commenter requested information related to the preparation of the fiscal note by the department.

The commenter asked what types of state-issued identification would be allowed by the rules, who would issue them, and what safeguards would be made to prevent a navigator from having to

reveal personal information visible on many forms of state identification.

Agency Response: The department does not agree that the rules proposed by the department go far beyond the goals of SB 1795. The department determined that additional requirements were necessary based on a thorough review of standards in federal regulations, as required by SB 1795; input from stakeholders in Texas; and conferences with HHS staff. Notably, several navigator entities in Texas have independently decided that federal requirements are insufficient. They perform their own background checks, employ individuals with specialized experience to serve as navigators, and provide extra training beyond what is required by the federal regulations. To ensure consistent and uniform qualification of all navigators in Texas and meet the minimum standards established in Insurance Code §4154.051(c), the department has incorporated standards for additional vetting and training into the adopted rules.

Requiring a certain number of hours of training as a prerequisite to a qualification is consistent with the requirements for navigators in other states. It also reflects the practice of several of the federal navigator grant recipients in Texas that the department spoke with in preparing the proposed rules. Many navigator entities employ individuals with additional training experience or require that those they hire as navigators receive training beyond what is required by the federal regulations. The department believes that the rules as adopted will ensure that navigators are qualified while providing them enough flexibility to choose the course they take to meet the preregistration education requirements.

As adopted, the rules do not require 40 hours of additional state-specific training. Instead, the adopted rules attribute 20 hours of federal education to the initial training requirement, and require 20 hours of state-specific training, for a total of 40 hours of training, with the specific requirements being contained in adopted §19.4008. The department determined that additional training was necessary based on input received during the department's review of the federal regulations and the rulemaking process. Several navigator entities in Texas have independently decided that federal training requirements are insufficient and either employ individuals with specialized experience to serve as navigators or provide extra training beyond what is required by the federal government. To ensure the qualification of all navigators in Texas, the department incorporated requirements for additional training into the adopted rules.

The department did not address compliance costs for navigators in the fiscal note for SB 1795 for several reasons. First, a fiscal note on a bill only addresses costs to the agency to implement a bill. The department generally does not pay compliance costs for entities or individuals who seek an authorization issued by the department, so the department would not include those costs in a fiscal note. In addition, there were no federal navigator regulations in place at the time the fiscal note was drafted, and no department determination that the federal regulations were insufficient, so it was not clear what, if any, compliance requirements would be adopted under SB 1795.

The adopted rule does not require that individual navigators use a specific type of state-issued identification. In preparing the cost note, the department considered the costs of a Texas ID card or a Texas driver's license, both of which are available from the Texas Department of Public Safety. The state-issued identifications noted in this response do not contain the detail or degree of information a navigator will have access to when assisting a

consumer, and providing state issued identification is a reasonable and necessary requirement in order to protect consumers.

Comment: A commenter submitted a written comment in support of the rule, with changes. The commenter asserted that the proposed regulations, including the errors and omissions insurance requirement, could discourage the participation of navigators. The commenter expressed concern that the rules would not be evenly applied across the application assister population.

The commenter disagreed with the proposed rules exception to applicability for certified application counselors in §19.4003(d). The commenter also expressed concern over adverse selection without a clear prohibition on certified application counselors from directing high-risk individuals to certain qualified health plans.

The commenter suggested the department create a publicly accessible system for handling consumer complaints. The commenter also said the department should specify the legal consequences for actions that harm consumers.

The commenter requested clarification on whether navigators can provide information beyond the exchange. The commenter supported the requirement to provide identification and also indicated it would support a requirement to disclosure if the individual navigator was also a licensed insurance producer.

Agency Response: The department disagrees that the financial responsibility requirement only allows for agents and brokers to register as navigators. The rules in §19.4010 provide for four different methods of demonstrating financial responsibility in order to allow each navigator entity to select the most appropriate method for their unique situation. The department expects that some navigator entities seeking registration may select one of the other nonliability insurance methods of demonstrating compliance. The rules balance the costs of the requirements with the need for consumer protection.

The department has chosen to not include certified application counselors in this rulemaking. The department acknowledges that certified application counselors and navigators provide similar services. However, certified application counselors and navigators are distinct under federal law. At a later date the department may decide to consider rules applicable specifically to certified application counselors.

The department disagrees that the specific legal consequences should be included in the subchapter. The rules include provisions regarding administrative violations, including administrative penalties and the termination of registration, in §19.4015. The rules also incorporate privacy requirements in §19.4012 that refer to other Insurance Code chapters with their corresponding enforcement provisions.

The rules include prohibitions on certain specified conduct in §19.4013. To the extent that a navigator entity or individual navigator is in compliance with these provisions, the department encourages education and outreach that may benefit health care consumers.

The department appreciates the supportive comments regarding the identification requirements in §19.4011. At this time the department is not including an additional requirement to disclose whether an individual navigator holds another license type granted by the department.

Comment: A commenter submitted a written response that asserted that the proposed rules would hurt, rather than help, Af-

fordable Care Act navigators with the effort to provide affordable health care to more Texans.

The commenter asserted that the proposed rules' additional 40-hour, state-specific training requirement is unnecessary and imposes a time and cost burden. The commenter stated that extensive training in medical privacy law is not relevant, as there is no longer a screen for pre-existing medical conditions. The commenter also stated that, because navigators are not insurance adjusters or insurance agents, they should not be held to those licensing standards.

The commenter asserted that the proposed rules would put severe obstacles in the way of local church and other volunteer efforts to assist Texans in need of insurance. The commenter stated that the proposed rules would require parents to undergo training before helping their adult children.

Agency Response: The department appreciates the comment, but disagrees that the proposed rules would prevent navigators from assisting Texans in evaluating and obtaining affordable health insurance coverage.

The department disagrees that the training requirement is unnecessary. Requiring a certain number of hours of training as a prerequisite to a qualification is consistent with the requirements for navigators in other states. It also reflects the practice of several of the federal navigator grant recipients in Texas that the department spoke with in preparing the proposed rules. Many navigator entities employ individuals with additional training experience or require that those they hire as navigators receive training beyond what is required by the federal regulations. The department believes that the rules as adopted will ensure that navigators are qualified while providing them enough flexibility to choose the course they take to meet the preregistration education requirements.

As adopted, the rules do not require 40 hours of additional state-specific training. Instead, the adopted rules attribute 20 hours of federal education to the initial training requirement, and require 20 hours of state-specific training, for a total of 40 hours of training, with the specific requirements being contained in adopted §19.4008. The department determined that additional training was necessary based on input received during the department's review of the federal regulations and the rulemaking process. Several navigator entities in Texas have independently decided that federal training requirements are insufficient and either employ individuals with specialized experience to serve as navigators or provide extra training beyond what is required by the federal government. To ensure the qualification of all navigators in Texas, the department incorporated requirements for additional training into the adopted rules.

Cost estimates in the rule proposal for navigator training vary between \$200 and \$800 dollars because the estimates were based on a cost range of \$5 to \$20 dollars per hour for 40 hours of state-specific training. In response to concerns in this and other similar comments about training costs and the amount of training required, the department has revised this requirement in the adopted rules from what the department proposed. As adopted, the rules only require 20 hours of state-specific training, which reduces the potential cost range for training to \$100 to \$400 dollars.

In addition, navigator entities that choose to develop their own training courses and have them certified by the department can reduce their cost more. Under 28 TAC Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Edu-

cation Programs, and Certification Courses), the cost to become an approved course provider is \$50, and there is no cost associated with the certification of a preregistration course except for the cost to develop the materials. Based on this, a navigator entity's cost to provide initial training for individual navigators employed by or associated with it could be as low as \$50 plus the cost of training materials and supplies, regardless of the number of individual navigators employed by or associated with the navigator entity.

In adopted §19.4003(f), the department has clarified the rule's applicability to state that it does not apply to "an individual who only provides navigator services to a person or persons related to the individual within the third degree by consanguinity or within the second degree by affinity, as determined under Government Code Chapter 573, Subchapter B."

Applicability of the rules to specific individuals and the need for the department to take action under the rules depends on the facts of the situation. This is the case for anyone regulated by the department, not just navigators. In most instances it may be clear that someone is performing an act regulated by the department, but at other times it may not be apparent if someone is acting as an agent or someone is performing the business of insurance. In those instances, the department must look closely at the facts of the case, and may even need to proceed to a contested case hearing to conclusively determine if an act is regulated by the department.

Comment: A commenter submitted a written comment on the rule proposal. The commenter stated that by opting out of Medicaid expansion and declining to set up a state insurance exchange, Texas missed two significant opportunities to assist those who do not have health coverage. The commenter stated that even though the federal government would initially pay 100 percent, and later 90 percent, of the costs to implement Medicaid expansion, the state of Texas chose not to accept federal Affordable Care Act dollars that would have ensured that more than one million Texans would have access to health care. The commenter stated that extensive rules and regulations on health benefit exchange navigators should not result in another missed opportunity to cover those most in need.

The commenter requested that the proposed rules clearly and efficiently address concerns regarding consumer protection and privacy, and that the department provide an explanation demonstrating how the federal guidelines have "potential insufficiencies." The commenter stated that the department's proposed rules for health benefit exchange navigators require entities, whose purpose is to help people sign up for health care, to provide 40 hours of training, in addition to the federally mandated training, and require federal funds to be used to pay for training.

The commenter stated that obtaining permission to deviate from the navigator's grant budget from the federal government could take 30-60 days, processing through the department's registration system could take 2-3 weeks, and the department estimated the fees for training to cost \$200-\$800 per navigator.

The commenter said that this cost was prohibitive for many non-profits with health benefit exchange navigators, and states that free training is available for the Health Insurance Advocacy and Counseling Program and the Community Partner Program. The commenter requested that the department examine all pathways to ensure that navigators have access to similar, relevant free training. The commenter said that creating unnecessary barriers

ers for health benefit exchange navigators would prevent those most in need from getting assistance to acquire health care, and does not appear to be compliant with the intent of SB 1795.

Agency Response: The department does not regulate the Texas Medicaid program. If the Legislature had acted to expand Medicaid within the parameters of the ACA, the Texas Health and Human Services Commission would be the implementing agency.

The details of the insufficiency of federally mandated navigator regulations are addressed in the preamble to this rule adoption order under the heading "Commissioner determination regarding sufficiency of federal standards," and the department refers the commenter to that portion of the preamble for the requested explanation. Additional details regarding the basis for the commissioner's determination are also included throughout the preamble of this adoption order.

Requiring a certain number of hours of training as a prerequisite to a qualification is consistent with the requirements for navigators in other states. It also reflects the practice of several of the federal navigator grant recipients in Texas that the department spoke with in preparing the proposed rules. Many navigator entities employ individuals with additional training experience or require that those they hire as navigators receive training beyond what is required by the federal regulations. The department believes that the rules as adopted will ensure that navigators are qualified while providing them enough flexibility to choose the courses they take to meet the preregistration education requirements.

As adopted, the rules do not require 40 hours of additional state-specific training. Instead, the adopted rules attribute 20 hours of federal education to the initial training requirement, and require 20 hours of state-specific training, for a total of 40 hours of training, with the specific requirements being contained in adopted §19.4008. The department determined that additional training was necessary based on input received during the department's review of the federal regulations and the rulemaking process. Several navigator entities in Texas have independently decided that federal training requirements are insufficient and either employ individuals with specialized experience to serve as navigators or provide extra training beyond what is required by the federal government. To ensure the qualification of all navigators in Texas, the department incorporated requirements for additional training into the adopted rules.

Cost estimates in the rule proposal for navigator training vary between \$200 and \$800 dollars because the estimates were based on a cost range of \$5 to \$20 dollars per hour for 40 hours of state-specific training. In response to concerns in this and other similar comments about training costs and the amount of training required, the department has revised this requirement in the adopted rules from what the department proposed. As adopted, the rules only require 20 hours of state-specific training, which reduces the potential cost range for training to \$100 to \$400 dollars.

In addition, navigator entities that choose to develop their own training courses and have them certified by the department can reduce their cost more. Under 28 TAC Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Education Programs, and Certification Courses), the cost to become an approved course provider is \$50, and there is no cost associated with the certification of a preregistration course except for the cost to develop the materials. Based on this, a navigator entity's cost to provide initial training for individual navigators em-

ployed by or associated with it could be as low as \$50 plus the cost of training materials and supplies, regardless of the number of individual navigators employed by or associated with the navigator entity.

The effective date of the rule will be February 10, 2014. This provides three weeks before the date navigators need to be registered. However, the department provided notice of the commissioner's adoption of these rules on the department's website on January 21, 2014. Nothing prevents a navigator from submitting an application for registration prior to the effective date of the rule, so navigators have an additional 20 days to prepare for compliance with the registration requirement before the effective date. In addition, the adopted rules do not require that navigators complete and provide proof of the department-certified training required by the adopted rules until May 1, 2014. Completing the necessary 20 hours of state-specific training will be the most time-consuming element of the registration process, but under adopted §19.4008(g) navigators do not need to complete or provide proof of completion of this training until May 1, which is 30 days after the end of the open enrollment period.

The department believes the need for the consumer protections included in the adopted rule warrants the March 1 applicability date, and that allowing a two-month delay in showing proof of state-specific training provides sufficient time for navigators to register with the department, obtain the required training, and continue to provide assistance to consumers throughout the current open enrollment period.

Comment: A commenter noted that Texas leads the nation in the percentage of persons without health insurance, and that the Affordable Care Act enables more Texans to get affordable insurance coverage. The commenter asserted that expanding Medicaid under the ACA would have allowed over one million Texans to gain coverage, but that state leadership refused to do so or to operate a state exchange. The commenter stated that the proposed rules should not serve as another obstacle for uninsured Texans to get coverage.

The commenter stated that the stated purpose of SB 1795 was to ensure that Texans could find and apply for affordable health coverage under any federally run health benefit exchange, while helping consumers in Texas. The commenter supported the bill to ensure that navigators would be able to help low- and middle-income Texans sign up for health plans, while also taking into account the importance of consumer protection measures. The commenter asserted that the proposed rules appear to go beyond the goal of ensuring consumer protection; and that they instead make it harder to become a navigator, which would make it harder for navigators to help consumers sign up for health plans. The commenter expressed concern about the additional training requirements and broad definitions of "navigator" and "navigator services" in the proposed rules.

The commenter expressed concern about the proposed rules' requirement that navigators complete 40 hours of training in addition to the 20 hours required by the federal regulations. Specifically, the commenter requested that the department explain how the department arrived at the 40-hour requirement and how the department determined the specific requirements for 13 hours of training on Texas-specific Medicaid provisions, 13 hours of training on applicable privacy requirements, and 14 hours of training on ethics. The commenter stated that, to most efficiently address consumer protection concerns, the rules should focus on the training's content rather than on an apparently arbitrary hour amount. The commenter requested that the department revise

the rules to address the content to be included and how it relates to the total hour requirement.

The commenter also expressed concern about the cost of training. The commenter noted that the training is estimated to cost anywhere from \$200-\$800 per navigator, and asserted that any resources a navigator must allocate to training will be diverted from actually helping people sign up for health plans. The commenter requested that the department explain why the rules call for an outside vendor to provide the training. The commenter also requested that the department consider allowing more cost-effective alternatives, including existing government-provided training programs.

The commenter asserted that the proposed definitions of "navigator" and "navigator services" were overly broad. The commenter stated that, as proposed, the rules are unclear whether a person would need to register as a navigator and comply with the training requirements before helping a friend or family member sign up for a health plan. The commenter requested that the department clarify the definitions and ensure that a person need not comply with onerous regulations for simply helping a friend or loved one.

Agency Response: The department appreciates the comments, acknowledges the problems posed by the extent of the uninsured population in Texas, and agrees that the proposed rules should not serve as a barrier to coverage for that population. The rules as adopted only contain provisions that are necessary to protect consumers. The department agrees that SB 1795 allows navigators to help low- and middle-income Texans sign up for health plans, while ensuring that those consumers are protected.

The department does not regulate the Texas Medicaid program. If the Legislature acted to expand Medicaid within the parameters of the ACA, the Texas Health and Human Services Commission would be the implementing agency.

As proposed, the terms "individual navigator" and "navigator entity" were based on the statutory definition of "navigator" in Insurance Code §4154.002(3), which defines "navigator" as "an individual or entity performing the activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." Rather than using the words "activities and duties of a navigator" in the definitions for "individual navigator" and "navigator entity," the department used the defined term "navigator services." The defined term "navigator services" was intended to capture "activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." However, some commenters did not understand that Insurance Code §4154.002(3) defines the term "navigator" by referencing the "activities and duties of a navigator," and use of the department term intended to capture that phrase resulted in further confusion.

To avoid confusion regarding the statutory basis for the definition of "individual navigator" and "navigator entity," the department has revised the definitions of the terms to remove the defined term "navigator services" and incorporate the statutory phrase "activities and duties of a navigator." In addition, the department has revised the definitions of these terms to include a citation to the specific subsection in 42 USC §18031 that sets out the duties of a navigator.

To ensure clarity regarding the statutory basis for the term "navigator services," the department has revised that term to use the statutory phrase "activities and duties of a navigator." The department also removed a reference to the adopted rules because

all activities and duties described in them are based on statutory activities and duties; added a citation to the specific subsection in 42 USC §18031 that sets out duties of a navigator; added a citation to Insurance Code §4154.051(a), which is the source of the duties listed in the definition; and revised the list of duties in the definition to include only those most relevant to the need for regulation of navigators.

As adopted, the rules require five hours on Texas-specific Medicaid and Children's Health Insurance Program provisions, five hours on applicable privacy requirements, five hours on ethics, two hours on basic insurance terminology and how insurance works, two hours of exam preparation, and one hour to complete a final examination.

Requiring a certain number of hours of training as a prerequisite to a qualification is consistent with the requirements for navigators in other states. It also reflects the practice of several of the federal navigator grant recipients in Texas that the department spoke with in preparing the proposed rules. Many navigator entities employ individuals with additional training experience or require that those they hire as navigators receive training beyond what is required by the federal regulations. The department believes that the rules as adopted will ensure that navigators are qualified while providing them enough flexibility to choose the courses they take to meet the preregistration education requirements.

Cost estimates in the rule proposal for navigator training vary between \$200 and \$800 dollars because the estimates were based on a cost range of \$5 to \$20 dollars per hour for 40 hours of state-specific training. In response to concerns in this and other similar comments about training costs and the amount of training required, the department has revised this requirement in the adopted rules from what the department proposed. As adopted, the rules only require 20 hours of state-specific training, which reduces the potential cost range for training to \$100 to \$400 dollars.

In addition, navigator entities that choose to develop their own training courses and have them certified by the department can reduce their cost more. Under 28 TAC Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Education Programs, and Certification Courses), the cost to become an approved course provider is \$50, and there is no cost associated with the certification of a preregistration course except for the cost to develop the materials. Based on this, a navigator entity's cost to provide initial training for individual navigators employed by or associated with it could be as low as \$50 plus the cost of training materials and supplies, regardless of the number of individual navigators employed by or associated with the navigator entity.

Comment: A commenter submitted comments for the proposed rule and had the comments read at the January 6 hearing for the proposed rule. The commenter noted that the department is moving forward with proposed rules to implement additional restrictions and requirements for navigators.

The commenter acknowledged the need to protect Texas consumers' privacy and data, but asserted that the proposed rules go well beyond the requirements for persons doing work similar to the work the navigators would do, and singles out navigators. The commenter asserted that the excessive fees, unnecessary training requirements, and other restrictions on navigators in the proposed rules would go past consumer protection and would make it more difficult for navigators to fulfill their core responsi-

bility to provide Texans with the assistance and information about available health care options they need to make informed decisions.

The commenter noted that Texas has the highest uninsured rate in the nation, and stands to benefit greatly from the implementation of the Affordable Care Act. The commenter further noted that one of the key components of the law is the implementation of a health care marketplace; and that navigators are a critical resource for information and enrollment assistance for vulnerable and underserved populations.

The commenter further noted that, while other entities in addition to navigators, such as insurance agents and health insurance companies, are helping with enrollment and have access to the same private personal data as navigators, insurance agents and health insurance companies were specifically excluded from the proposed rule. The commenter asked why the proposed restrictions did not apply to all entities that gain access to and maintain files with private personal information, if the impetus for the rules is truly about protecting consumer privacy; and if so, why similar restrictions had not been proposed in the past.

The commenter asserted that, if the department implements the proposed restrictions and training requirements for navigators, the department should take steps to ensure that personal data is secure when in the hands of organizations, such as health insurance agents and companies, who benefit financially from helping consumers, as well as when in the hands of non-profit and community organizations. The commenter further asserted that the department require that entities that benefit financially from helping consumers receive the same training as navigators on privacy, ethics, and Texas Medicaid, so that they can conscientiously assist Texas consumers with selecting a health plan that meets their needs.

The commenter requested that, if equivalent requirements are already in place, the department provide information regarding the statutory or rule requirements for health insurance agents and health insurance companies as they relate to registration requirements, background check and fingerprint requirements, and training requirements, including the number of hours devoted to Texas Medicaid, privacy, and ethics.

The commenter thanked the department for considering the comments, and expressed interest in continuing to work with the department to ensure that consumers are protected and that those who need it have access to affordable health care.

Agency Response: The department thanks the commenter for the commenter's concern and acknowledges that the proposed rules would implement additional requirements for navigators. The department agrees that protecting Texas consumers' privacy and data is essential, and believes that the proposed rules would help accomplish this goal without unnecessarily singling out navigators or hindering them in their ability to provide Texans with the assistance and information they need to make informed decisions about available health care options.

As adopted, the rules do not require 40 hours of additional state-specific training. Instead, the adopted rules attribute 20 hours of federal education to the initial training requirement, and require 20 hours of state-specific training, for a total of 40 hours of training, with the specific requirements being contained in adopted §19.4008. The department determined that additional training was necessary based on input received during the department's review of the federal regulations and the rulemaking process. Several navigator entities in Texas have independently decided

that federal training requirements are insufficient and either employ individuals with specialized experience to serve as navigators or provide extra training beyond what is required by the federal government. To ensure the qualification of all navigators in Texas, the department incorporated requirements for additional training into the adopted rules.

Cost estimates in the rule proposal for navigator training vary between \$200 and \$800 dollars because the estimates were based on a cost range of \$5 to \$20 dollars per hour for 40 hours of state-specific training. In response to concerns in this and other similar comments about training costs and the amount of training required, the department has revised this requirement in the adopted rules from what the department proposed. As adopted, the rules only require 20 hours of state-specific training, which reduces the potential cost range for training to \$100 to \$400 dollars.

In addition, navigator entities that choose to develop their own training courses and have them certified by the department can reduce their cost more. Under 28 TAC Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Education Programs, and Certification Courses), the cost to become an approved course provider is \$50, and there is no cost associated with the certification of a preregistration course except for the cost to develop the materials. Based on this, a navigator entity's cost to provide initial training for individual navigators employed by or associated with it could be as low as \$50 plus the cost of training materials and supplies, regardless of the number of individual navigators employed by or associated with the navigator entity.

In response to this comment and similar comments, expressing concerns regarding the registration fee, the department agrees to withdraw the proposed section that would establish registration and renewal fees and not include it in the adopted rule.

The department acknowledges the role health insurance agents and insurers play in providing information and enrollment assistance, and in handling consumer data. However, SB 1795 specifically excluded agents and insurers, so the department could not include health insurance agents and insurers in the proposed rules.

The department notes that SB 1795 did not change the Texas Medical Records Privacy Act, Health and Safety Code Title 2, Subtitle I, Chapter 181, effective September 1, 2012, which applies to any individual, business, or organization that obtains, stores, or possesses protected health information including agents and insurance companies. The department further notes that the Texas Medical Records Privacy Act is significantly broader in scope than the federal Health Insurance Portability and Accountability Act, and provides additional consumer protections.

The department notes that the current rules for agent and adjuster continuing education and prelicensing training can be found at 28 TAC §19.602 and §§19.1001 - 19.1018; and that there is detailed information on licensing and education requirements for agents, adjusters, and providers available on the department's website at www.tdi.texas.gov/licensing/agent/agcehome.html. The department notes that, generally, licensees must earn 30 hours of continuing education, with 2 hours of ethics and consumer protection for each licensing period.

Comment: A commenter submitted written comments on the proposed rules. The commenter expressed concern that the

proposed rules would undermine the vital role of navigators and create substantial barriers for those helping Texans to enroll in a health plan.

The commenter stated the understanding that SB 1795 enables state oversight of the Affordable Care Act navigator program, and the proposed rules were drawn up in order to improve consumer protection. The commenter said it would be reasonable and appropriate to register navigators, but was concerned that the rules as proposed would require any individual who provides enrollment assistance to register with the department, and that this scope would include private individuals and discourage them from helping a friend, neighbor, co-worker, or family member fill out an application for coverage.

The commenter expressed concern that, while it is reasonable and appropriate that the department protect consumers concerning navigator access to their sensitive and personal information, the rules subject all navigator activities to state regulation, including important navigator functions that do not pose any risk to consumers, such as public education and outreach efforts to explain basic health insurance concepts and how coverage works. The commenter noted that health insurance is a complicated subject, especially for those who have not been previously insured. The commenter expressed the belief that restricting the distribution of impartial information on available health options would be obstructive and counterproductive, because it would impede the public's access to important details that allow them to make informed decisions.

The commenter said it would be reasonable and appropriate that the department protect consumers by requiring that ACA navigators receive adequate training including education on state-specific health programs, privacy requirements and ethics, but it is unreasonable and inappropriate to insist on an arbitrary, quantitative benchmark of 40 training hours on top of the 20-30 hours of federal navigator training already required. The commenter noted that this training would cost hundreds of dollars per person, while other community-based enrollment assistants who perform similar services receive training for free. The commenter asked that the department explain why currently available state-level training modules are not being utilized (i.e., HIPAA Rights and Responsibilities, HHSC Medicaid/CHIP navigator training).

The commenter said expenses for surety bonds, registration, fingerprinting, background checks, training, and so on would present overwhelming and overbearing obstacles, and that every dollar spent on these items would be better spent on enrollment efforts.

The commenter said the rules as proposed make it more difficult for staff and volunteers of community-based, family-focused, nonprofit health and human organizations to reach diverse communities at a disadvantage.

The commenter said the proposed rules would add an extra layer of regulation to make it more difficult for low-income Texans to obtain health care, thus perpetuating an unnecessary tax on insured Texans who play by the rules.

Agency Response: The department does not agree that state regulation undermines the role of navigators or creates barriers for them. The department determined that additional requirements were necessary based on a thorough review of standards in federal regulations, as required by SB 1795; input from stakeholders in Texas; and conferences with HHS staff. Notably, several navigator entities in Texas have independently decided that federal requirements are insufficient. They perform their own

background checks, employ individuals with specialized experience to serve as navigators, and provide extra training beyond what is required by the federal regulations. To ensure consistent and uniform qualification of all navigators in Texas and meet the minimum standards established in Insurance Code §4154.051(c), the department has incorporated standards for additional vetting and training into the adopted rules.

As proposed, the terms "individual navigator" and "navigator entity" were based on the statutory definition of "navigator" in Insurance Code §4154.002(3), which defines "navigator" as "an individual or entity performing the activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." Rather than using the words "activities and duties of a navigator" in the definitions for "individual navigator" and "navigator entity," the department used the defined term "navigator services." The defined term "navigator services" was intended to capture "activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." However, some commenters did not understand that Insurance Code §4154.002(3) defines the term "navigator" by referencing the "activities and duties of a navigator," and use of the department term intended to capture that phrase resulted in further confusion.

To avoid confusion regarding the statutory basis for the definition of "individual navigator" and "navigator entity," the department has revised the definitions of the terms to remove the defined term "navigator services" and incorporate the statutory phrase "activities and duties of a navigator." In addition, the department has revised the definitions of these terms to include a citation to the specific subsection in 42 USC §18031 that sets out the duties of a navigator.

In adopted §19.4003(f), the department has clarified the rule's applicability to state that it does not apply to "an individual who only provides navigator services to a person or persons related to the individual within the third degree by consanguinity or within the second degree by affinity, as determined under Government Code Chapter 573, Subchapter B."

Applicability of the rules to specific individuals and the need for the department to take action under the rules depends on the facts of the situation. This is the case for anyone regulated by the department, not just navigators. In most instances it may be clear that someone is performing an act regulated by the department, but at other times it may not be apparent if someone is acting as an agent or someone is performing the business of insurance. In those instances, the department must look closely at the facts of the case, and may even need to proceed to a contested case hearing to conclusively determine if an act is regulated by the department.

For example, there may not be a role for the department in the interaction of the commenter with the commenter's neighbor. If the commenter is not purporting to be a navigator and the commenter is not taking so many acts that the commenter's neighbor believes the commenter is a navigator, or is relying on the qualifications of the commenter as a navigator, the rules may not be applicable to the commenter. However, in other instances someone might deceptively pose as a navigator in an attempt to access a neighbor's private information, or someone may honestly want to act as a navigator to assist neighbors, but not actually understand how to provide such assistance. In those situations, the rules may be applicable and may be necessary to ensure consumer protection.

As adopted, the rules do not require 40 hours of additional state-specific training. Instead, the adopted rules attribute 20 hours of federal education to the initial training requirement, and require 20 hours of state-specific training, for a total of 40 hours of training, with the specific requirements being contained in adopted §19.4008. The department determined that additional training was necessary based on input received during the department's review of the federal regulations and the rulemaking process. Several navigator entities in Texas have independently decided that federal training requirements are insufficient and either employ individuals with specialized experience to serve as navigators or provide extra training beyond what is required by the federal government. To ensure the qualification of all navigators in Texas, the department incorporated requirements for additional training into the adopted rules.

Cost estimates in the rule proposal for navigator training vary between \$200 and \$800 dollars because the estimates were based on a cost range of \$5 to \$20 dollars per hour for 40 hours of state-specific training. In response to concerns in this and other similar comments about training costs and the amount of training required, the department has revised this requirement in the adopted rules from what the department proposed. As adopted, the rules only require 20 hours of state-specific training, which reduces the potential cost range for training to \$100 to \$400 dollars.

In addition, navigator entities that choose to develop their own training courses and have them certified by the department can reduce their cost more. Under 28 TAC Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Education Programs, and Certification Courses), the cost to become an approved course provider is \$50, and there is no cost associated with the certification of a preregistration course except for the cost to develop the materials. Based on this, a navigator entity's cost to provide initial training for individual navigators employed by or associated with it could be as low as \$50 plus the cost of training materials and supplies, regardless of the number of individual navigators employed by or associated with the navigator entity.

It is possible that currently available state-level training modules could be used for training, if a course provider chose to use them in developing a course.

In response to this and similar comments, the department has made addition revisions to the text as adopted to reduce compliance costs for navigators. In addition to reducing state-specific training requirements, which has the effect reducing costs for education, the department had declined to adopt proposed §19.4008, which would have required a \$50 registration fee for all individual navigators and all navigator entities. The department declines to eliminate the financial responsibility requirements in adopted §19.4010, because this an insufficiency the commissioner has determined exists in federal regulations. In response to this and other similar comments regarding the potential cost associated with the requirement, the department has reduced the surety bond amount included in §19.4010(a)(1) to \$25,000, which would reduce the cost of compliance for any navigator entity that selected that option for demonstrating financial responsibility.

The department also declines to waive fingerprinting and background check requirements, because they are necessary to implement a statutorily required minimum standard for these rules that a navigator not have been convicted of a felony. The department has authority to require fingerprinting under Insurance

Code §4001.103, which permits the department to deny an application for an authorization for an activity regulated under Insurance Code Title 13 if the applicant fails to provide a complete set of fingerprints on request by the department.

Comment: A commenter asked the department to not adopt rules which would place more burdens on navigators seeking to help people enroll in health insurance plans under the Affordable Care Act and suggested that the proposed rules were intended to circumvent the law.

Agency Response: The department declines to withdraw the proposed rules, because it believes that the federal regulations alone are insufficient. The department determined that additional requirements were necessary based on a thorough review of standards in federal regulations, as required by SB 1795; input from stakeholders in Texas; and conferences with HHS staff. Notably, several navigator entities in Texas have independently decided that federal requirements are insufficient. They perform their own background checks, employ individuals with specialized experience to serve as navigators, and provide extra training beyond what is required by the federal regulations.

To ensure consistent and uniform qualifications of all navigators in Texas, and to meet the minimum standards established in Insurance Code §4154.051(c), the department has incorporated standards for additional vetting and training into the adopted rules. The department acknowledges the commenter's concern that uninsured Texans, who stand to benefit greatly from the implementation of the Affordable Care Act, have access to navigators' assistance in gathering information about and enrolling in the health care marketplace.

Comment: A commenter submitted written comments and testified at both public hearings for the rule proposal. The commenter expressed concern that the proposed rule would create a broad prohibition on the use of the term "navigator," for anyone not registered with the department under as 28 TAC Chapter 19, Subchapter W. The commenter said the term "navigator" is commonly used in various healthcare settings and that many job titles include the term.

The commenter was also concerned about the definition of the term "navigator services," in that its scope was too broad. The commenter said the department was "over reaching" with its definition, and that the rules should apply to those who have access to a person's private information, not to those providing education.

Finally, the commenter asked that the department extend the applicability date for the rules to go into effect after the marketplace closes, to allow navigators time to come into compliance.

Agency Response: The department does not intend to regulate use of the term "navigator" beyond its use associated with the federal health benefit exchange, and the applicability provision included the proposed rule would prevent application to anyone not required to comply with the rules.

However, several commenters have expressed concern regarding limits on use of the term "navigator." In order to clarify the intent of the provision, the department has revised the adopted text addressing use of the term "navigator" to clarify that the section only applies to entities and individuals subject to the rules as provided for in §19.4003 (relating to Applicability). The department has done this by inserting a reference to §19.4003, which specifies those to whom the adopted rules apply. In addition, the department has revised the specific provision addressing use of

the term "navigator" to prohibit "use of the term 'navigator' in a deceptive manner as part of an entity's name or website address or in an individual's title."

To ensure clarity regarding the statutory basis for the term "navigator services," the department has revised that term to use the statutory phrase "activities and duties of a navigator." The department also removed a reference to the adopted rules because all activities and duties described in them are based on statutory activities and duties; added a citation to the specific subsection in 42 USC §18031 that sets out duties of a navigator; added a citation to Insurance Code §4154.051(a), which is the source of the duties listed in the definition; and revised the list of duties in the definition to include only those most relevant to the need for regulation of navigators.

The effective date of the rule will be February 10, 2014. This provides three weeks before the date navigators need to be registered. However, the department provided notice of the commissioner's adoption of these rules on the department's website on January 21, 2014. Nothing prevents a navigator from submitting an application for registration prior to the effective date of the rule, so navigators have an additional 20 days to prepare for compliance with the registration requirement before the effective date. In addition, the adopted rules do not require that navigators complete and provide proof of the department-certified training required by the adopted rules until May 1, 2014. Completing the necessary 20 hours of state-specific training will be the most time-consuming element of the registration process, but under adopted §19.4008(g) navigators do not need to complete or provide proof of completion of this training until May 1, which is 30 days after the end of the open enrollment period.

The department believes the need for the consumer protections included in the adopted rule warrants the March 1 applicability date, and that allowing a two-month delay in showing proof of state-specific training provides sufficient time for navigators to register with the department, obtain the required training, and continue to provide assistance to consumers throughout the current open enrollment period.

Comment: A commenter submitted a comment letter to the department listing concerns the commenter had with the proposed rule. The commenter applauded the department's stated intent to help consumers, but said the proposed rules would create confusion and undermine the intent of the rules and statute. The definitions were confusing, the commenter said, and it was not clear who needed to register, because "enrollment assistance" was a vague term. The commenter also said that registration costs were excessive and the department did not submit a fiscal note for SB 1795. Based on this lack of fiscal note, the commenter asked what authority the department relied on to justify additional fees.

Agency Response: As proposed, the terms "individual navigator" and "navigator entity" were based on the statutory definition of "navigator" in Insurance Code §4154.002(3), which defines "navigator" as "an individual or entity performing the activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." Rather than using the words "activities and duties of a navigator" in the definitions for "individual navigator" and "navigator entity," the department used the defined term "navigator services." The defined term "navigator services" was intended to capture "activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." However, some commenters did not understand that Insurance Code §4154.002(3) defines the term

"navigator" by referencing the "activities and duties of a navigator," and use of the department term intended to capture that phrase resulted in further confusion.

To avoid confusion regarding the statutory basis for the definition of "individual navigator" and "navigator entity," the department has revised the definitions of the terms to remove the defined term "navigator services" and incorporate the statutory phrase "activities and duties of a navigator." In addition, the department has revised the definitions of these terms to include a citation to the specific subsection in 42 USC §18031 that sets out the duties of a navigator.

To ensure clarity regarding the statutory basis for the term "navigator services," the department has revised that term to use the statutory phrase "activities and duties of a navigator." The department also removed a reference to the adopted rules because all activities and duties described in them are based on statutory activities and duties; added a citation to the specific subsection in 42 USC §18031 that sets out duties of a navigator; added a citation to Insurance Code §4154.051(a), which is the source of the duties listed in the definition; and revised the list of duties in the definition to include only those most relevant to the need for regulation of navigators.

In order to address concerns regarding the term "enrollment assistance in a health benefit exchange," the department adopts a revised definition by replacing the phrase "completing the application for health coverage affordability programs" with the words "applying for or enrolling in health coverage affordability programs."

The purpose of this change is to clarify that definition contemplates assistance in the specific act of applying for health coverage affordability programs available through a federal health benefit exchange, not merely assistance in completing an application form when the form is used for reasons other than applying for health coverage in the exchange. To further clarify this definition, the department has also incorporated in the definition additional examples of what would constitute providing assistance in the act of applying for health coverage affordability programs available through a health benefit exchange.

The department did not address compliance costs for navigators in the fiscal note for SB 1795 for several reasons. First, a fiscal note on a bill only addresses costs to the agency to implement a bill. The department generally does not pay compliance costs for entities or individuals who seek an authorization issued by the department, so the department would not include those costs in a fiscal note. In addition, there were no federal navigator regulations in place at the time the fiscal note was drafted, and no department determination that the federal regulations were insufficient, so it was not clear what, if any, compliance requirements would be adopted under SB 1795.

In response to this comment and similar comments, expressing concerns regarding the registration fee, the department agrees to withdraw the proposed section that would establish registration and renewal fees and not include it in the adopted rule.

Comment: A commenter submitted a written comment in which the commenter raised a concern with navigators being prohibited from comparing the features of different health plans, such as deductibles, the provider network, and copays.

The commenter also addressed a concern that many Texas health care organizations use the term "navigator" and have for many years. The commenter recommended that the rules

should not prohibit these individuals and organizations from using the term "navigator."

The commenter said that the rules should not be applicable to individuals who are helping a friend or family member enroll or community groups who are only providing information to the public about the marketplace. The commenter said that extra training imposed on navigators in the rule is excessive and imposes a significant and unjustified time and money burden on these non-profits that are offering a free service to poor families. The commenter also believes that many navigators would have to travel hundreds of miles to a state testing location in order to comply with the training requirements.

The commenter indicated the March 1 deadline for compliance is too soon. The commenter suggested that navigators be allowed two to three months after the effective date of the rules to come into compliance. The commenter said a March 1 deadline will shut down navigators right before the final month of open enrollment.

Agency Response: The commenter appears to address proposed §19.4014(a)(5) when expressing concern that the proposed rule would prevent a navigator from helping a consumer understand and compare benefits to make an informed insurance choice. As proposed, §19.4014(a)(5) would prohibit a navigator from "provid[ing] advice regarding substantive benefits or comparative benefits of different health benefit plans." The intent of this provision was not to prevent navigators from discussing the coverage available under plans, but rather to prohibit navigators from making blanket statements regarding which plan is more beneficial. The choice of which plan is better should be made by the consumer, not the navigator. This prohibition is based on Insurance Code §4154.101(a)(4), which prohibits a navigator who is not licensed under Insurance Code Chapter 4054 (relating to Life, Accident, and Health Insurance Agents), from offering advice or advising consumers on which qualified health plan available through a health benefit exchange is preferable.

However, based on this comment and statements made by other commenters, it is apparent that proposed §19.4014(a)(5) needs to be revised for clarity. In the rule as adopted, the department revised the provision to track the language of Insurance Code §4154.101(a)(4). In addition, the adopted text follows this revised provision with a subsection that tracks Insurance Code §4154.101(b), which says a navigator is not prohibited under Insurance Code §4154.101 from "providing information and services consistent with the mission of a navigator."

The department does not intend to regulate use of the term "navigator" beyond its use associated with the health benefit exchange, and the applicability provision included the proposed rule would prevent application to anyone not required to comply with the rules.

However, several commenters have expressed concern regarding limits on use of the term "navigator." In order to clarify the intent of the provision, the department has revised the adopted text addressing use of the term "navigator" to clarify that the section only applies to entities and individuals subject to the rules as provided for in §19.4003 (relating to Applicability). The department has done this by inserting a reference to §19.4003, which specifies those to whom the adopted rules apply. In addition, the department has revised the specific provision addressing use of the term "navigator" to prohibit "use of the term 'navigator' in a

deceptive manner as part of an entity's name or website address or in an individual's title."

In adopted §19.4003(f), the department has clarified the rule's applicability to state that it does not apply to "an individual who only provides navigator services to a person or persons related to the individual within the third degree by consanguinity or within the second degree by affinity, as determined under Government Code Chapter 573, Subchapter B."

Cost estimates in the rule proposal for navigator training vary between \$200 and \$800 dollars because the estimates were based on a cost range of \$5 to \$20 dollars per hour for 40 hours of state-specific training. In response to concerns in this and other similar comments about training costs and the amount of training required, the department has revised this requirement in the adopted rules from what the department proposed. As adopted, the rules only require 20 hours of state-specific training, which reduces the potential cost range for training to \$100 to \$400 dollars.

In addition, navigator entities that choose to develop their own training courses and have them certified by the department can reduce their cost more. Under 28 TAC Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Education Programs, and Certification Courses), the cost to become an approved course provider is \$50, and there is no cost associated with the certification of a preregistration course except for the cost to develop the materials. Based on this, a navigator entity's cost to provide initial training for individual navigators employed by or associated with it could be as low as \$50 plus the cost of training materials and supplies, regardless of the number of individual navigators employed by or associated with the navigator entity.

The department does not agree that training requirements in the proposed rules would require that some navigators travel hundreds of miles to reach a testing site. Nothing in the proposed rule requires that training or examinations be provided by a specific vendor.

Under the proposed rules, the review and approval process for training courses will be the same as the department applies for insurance adjuster prelicensing courses. The examination for a course certified under the process must be administered by the course provider as a component of the course. In order to clarify the different methods that may be used for navigator education courses, proposed §19.4009 was modified to insert a new subsection (c) into the text stating that the education course format "may consist of classroom courses, classroom equivalent courses, self-study courses, or one time event courses..." The department proposed and adopts this approach to ensure availability of navigator training options across the state, so that navigators do not need to travel to satisfy them. It also means navigator registrants will not need to use a specific vendor for course work or exams or travel hundreds of miles to take an exam. Under this approach, a navigator entity may even choose to apply with the department to become a course provider and develop its own course material.

The effective date of the rule will be February 10, 2014. This provides three weeks before the date navigators need to be registered. However, the department provided notice of the commissioner's adoption of these rules on the department's website on January 21, 2014. Nothing prevents a navigator from submitting an application for registration prior to the effective date of the rule, so navigators have an additional 20 days to prepare

for compliance with the registration requirement before the effective date. In addition, the adopted rules do not require that navigators complete and provide proof of the department-certified training required by the adopted rules until May 1, 2014. Completing the necessary 20 hours of state-specific training will be the most time-consuming element of the registration process, but under adopted §19.4008(g) navigators do not need to complete or provide proof of completion of this training until May 1, which is 30 days after the end of the open enrollment period.

The department believes the need for the consumer protections included in the adopted rule warrants the March 1 applicability date, and that allowing a two-month delay in showing proof of state-specific training provides sufficient time for navigators to register with the department, obtain the required training, and continue to provide assistance to consumers throughout the current open enrollment period.

Comment: A commenter submitted a written comment and testified on the proposed rule. The commenter was concerned that the proposed regulations were overreaching and could have unintended consequences, such as the definition for "navigator," which the commenter said was broad and could encompass a wide variety of individuals and agencies.

The commenter also said the proposed regulations would prevent friends, family, and neighbors from talking about their experiences on how they accessed coverage, the plan they chose and why. The commenter said the definition for "navigator" should be the same as the definition in the Affordable Care Act.

The commenter said the proposed education requirements to register as a navigator were too costly and time intensive, and few nonprofit organizations have the time or resources to comply. The commenter said that the proposed regulations would require navigators to complete an extensive training and continuing education program at the cost of the organization or individual that will deter reputable organizations from assisting families.

As an alternative, the commenter asked that the department use the HHSC Community Partner Program, which has developed a web-based training module on CHIP, Medicaid and the Health Insurance Marketplace instead of working with private vendors. The commenter suggested the department require organizations providing application assistance to complete the HHSC Community Partner Program modules at no cost to the organizations.

The commenter said prohibiting an entity's use of the word "navigator" or "navigation" to describe its services was extreme and beyond the department's authority because patient navigation has been in existence long before the ACA was written and the HHSC 1115 Waiver to reform the patient delivery system lists patient navigation as one of its eligible projects.

The commenter encouraged the department to not create barriers that would discourage honest individuals and organizations from helping individuals.

Agency Response: As proposed, the terms "individual navigator" and "navigator entity" were based on the statutory definition of "navigator" in Insurance Code §4154.002(3), which defines "navigator" as "an individual or entity performing the activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." Rather than using the words "activities and duties of a navigator" in the definitions for "individual navigator" and "navigator entity," the department used the defined term "navigator services." The defined term "naviga-

tor services" was intended to capture "activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." However, some commenters did not understand that Insurance Code §4154.002(3) defines the term "navigator" by referencing the "activities and duties of a navigator," and use of the department term intended to capture that phrase resulted in further confusion.

To avoid confusion regarding the statutory basis for the definition of "individual navigator" and "navigator entity," the department has revised the definitions of the terms to remove the defined term "navigator services" and incorporate the statutory phrase "activities and duties of a navigator." In addition, the department has revised the definitions of these terms to include a citation to the specific subsection in 42 USC §18031 that sets out the duties of a navigator.

In adopted §19.4003(f), the department has clarified the rule's applicability to state that it does not apply to "an individual who only provides navigator services to a person or persons related to the individual within the third degree by consanguinity or within the second degree by affinity, as determined under Government Code Chapter 573, Subchapter B."

Applicability of the rules to specific individuals and the need for the department to take action under the rules depends on the facts of the situation. This is the case for anyone regulated by the department, not just navigators. In most instances it may be clear that someone is performing an act regulated by the department, but at other times it may not be apparent if someone is acting as an agent or someone is performing the business of insurance. In those instances, the department must look closely at the facts of the case, and may even need to proceed to a contested case hearing to conclusively determine if an act is regulated by the department.

For example, there may not be a role for the department in the interaction of the commenter with the commenter's neighbor. If the commenter is not purporting to be a navigator and the commenter is not taking so many acts that the commenter's neighbor believes the commenter is a navigator, or is relying on the qualifications of the commenter as a navigator, the rules may not be applicable to the commenter. However, in other instances someone might deceptively pose as a navigator in an attempt to access a neighbor's private information, or someone may honestly want to act as a navigator to assist neighbors, but not actually understand how to provide such assistance. In those situations, the rules may be applicable and may be necessary to ensure consumer protection.

The department agrees that the proposed rules would apply to more than just recipients of federal grants under the ACA. This applicability is consistent with the definition for "navigator" contained in SB 1795, which says, "navigator means an individual or entity performing the activities and duties of a navigator as described by 42 USC §18031." Application of the rules consistent with the SB 1795 definition of "navigator" means the adopted registration process will apply to those who want to perform the activities and duties of a navigator as described by 42 USC §18031, but who did not apply for, or applied for but did not receive, a federal navigator grant. One such organization has contacted the department several times since passage of the ACA, asking how it could receive authorization to act as a navigator.

The availability of more than just grant-recipient navigators in Texas will broaden the pool of navigators able to help Texans find and apply for health coverage under the exchange, which is

consistent with the purpose of SB 1795 as stated in Insurance Code Chapter 4154: "[T]he purpose of this chapter is to provide a state solution to ensure that Texans are able to find and apply for affordable health coverage under any federally run health benefit exchange, while helping consumers in this state." The department determined that the availability of more navigators in Texas would increase the likelihood that members of the uninsured population in this state would have assistance in finding healthcare through the exchange.

Application of the rules consistent with the SB 1795 definition of "navigator" also means that the standards adopted under the rules will apply equally to grant recipient and non-grant recipient navigators. For example, navigators with the organization that has contacted the department will need to have the same amount of education and training as navigators with any of the federal grant recipients in Texas. This will create a level playing field for all navigators in the state, and will help ensure that consumers receive enrollment assistance in a health benefit exchange from a qualified navigator.

Requiring a certain number of hours of training as a prerequisite to a qualification is consistent with the requirements for navigators in other states. It also reflects the practice of several of the federal navigator grant recipients in Texas that the department spoke with in preparing the proposed rules. Many navigator entities employ individuals with additional training experience or require that those they hire as navigators receive training beyond what is required by the federal regulations. The department believes that the rules as adopted will ensure that navigators are qualified while providing them enough flexibility to choose the course they take to meet the preregistration education requirements.

As adopted, the rules do not require 40 hours of additional state-specific training. Instead, the adopted rules attribute 20 hours of federal education to the initial training requirement, and require 20 hours of state-specific training, for a total of 40 hours of training, with the specific requirements being contained in adopted §19.4008. The department determined that additional training was necessary based on input received during the department's review of the federal regulations and the rulemaking process. Several navigator entities in Texas have independently decided that federal training requirements are insufficient and either employ individuals with specialized experience to serve as navigators or provide extra training beyond what is required by the federal government. To ensure the qualification of all navigators in Texas, the department incorporated requirements for additional training into the adopted rules.

Cost estimates in the rule proposal for navigator training vary between \$200 and \$800 dollars because the estimates were based on a cost range of \$5 to \$20 dollars per hour for 40 hours of state-specific training. In response to concerns in this and other similar comments about training costs and the amount of training required, the department has revised this requirement in the adopted rules from what the department proposed. As adopted, the rules only require 20 hours of state-specific training, which reduces the potential cost range for training to \$100 to \$400 dollars.

In addition, navigator entities that choose to develop their own training courses and have them certified by the department can reduce their cost more. Under 28 TAC Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Education Programs, and Certification Courses), the cost to become an approved course provider is \$50, and there is no cost asso-

ciated with the certification of a preregistration course except for the cost to develop the materials. Based on this, a navigator entity's cost to provide initial training for individual navigators employed by or associated with it could be as low as \$50 plus the cost of training materials and supplies, regardless of the number of individual navigators employed by or associated with the navigator entity.

It is possible that currently available state-level training modules, such as the web-based training module on CHIP referenced by the commenter, could be used to develop navigator training courses that a course provider could submit to the for certification under 28 TAC Chapter 19, Subchapter K.

The department does not intend to regulate use of the term "navigator" beyond its use associated with the health benefit exchange, and the applicability provision included the proposed rule would prevent application to anyone not required to comply with the rules.

However, several commenters have expressed concern regarding limits on use of the term "navigator." In order to clarify the intent of the provision, the department has revised the adopted text addressing use of the term "navigator" to clarify that the section only applies to entities and individuals subject to the rules as provided for in §19.4003 (relating to Applicability). The department has done this by inserting a reference to §19.4003, which specifies those to whom the adopted rules apply. In addition, the department has revised the specific provision addressing use of the term "navigator" to prohibit "use of the term 'navigator' in a deceptive manner as part of an entity's name or website address or in an individual's title."

Comment: A commenter provided written comments and hearing testimony recommending that the department eliminate cost prohibitive fees and unnecessary requirements. The commenter recommended the department compare navigator oversight with the Certified Benefits Counselor process, since the position was comparable. The commenter said that training requirements and criminal background checks were common, although no fingerprinting was required for a Certified Benefits Counselor. The commenter said that the department registers Certified Benefits Counselors with no fee for the registration. The commenter said the navigator training requirements and fees should be no more stringent than currently required for a Certified Benefits Counselor.

The commenter said that the cost of the initial registration fee proposed per navigator and for navigator grant recipients with multiple navigators was excessive. The commenter would prefer to see registration fees eliminated for individual navigators. The commenter wanted the department to eliminate the fingerprinting requirement because the requirement would not provide any additional benefit to the consumer but would represent an additional cost to the organization.

While the commenter agreed on the need for training, the commenter stated that the training should not be twice the number of hours required for the entire federal navigator course and fifteen hours more than for CBC training, and to be excessive at an expense ranging from \$200 to \$800 for initial registration and six annual hours of continuing education at \$60 to \$120 per annual registration period.

The commenter recommended that the provisions of §19.4011 (relating to Financial Responsibility) needed to be amended to either exclude governmental entities from the requirements, or in the alternative, the department should permit governmental

entities to provide evidence of self-insurance. The commenter requested that the department relax the limits on the use of the term "navigator" for public health agencies that may employ other types of navigators.

Agency Response: In response to this comment and similar comments, expressing concerns regarding the registration fee, the department agrees to withdraw the proposed section that would establish registration and renewal fees and not include it in the adopted rule.

As adopted, the rules do not require 40 hours of additional state-specific training. Instead, the adopted rules attribute 20 hours of federal education to the initial training requirement, and require 20 hours of state-specific training, for a total of 40 hours of training, with the specific requirements being contained in adopted §19.4008. The department determined that additional training was necessary based on input received during the department's review of the federal regulations and the rulemaking process. Several navigator entities in Texas have independently decided that federal training requirements are insufficient and either employ individuals with specialized experience to serve as navigators or provide extra training beyond what is required by the federal government. To ensure the qualification of all navigators in Texas, the department incorporated requirements for additional training into the adopted rules.

Cost estimates in the rule proposal for navigator training vary between \$200 and \$800 dollars because the estimates were based on a cost range of \$5 to \$20 dollars per hour for 40 hours of state-specific training. In response to concerns in this and other similar comments about training costs and the amount of training required, the department has revised this requirement in the adopted rules from what the department proposed. As adopted, the rules only require 20 hours of state-specific training, which reduces the potential cost range for training to \$100 to \$400 dollars.

In addition, navigator entities that choose to develop their own training courses and have them certified by the department can reduce their cost more. Under 28 TAC Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Education Programs, and Certification Courses), the cost to become an approved course provider is \$50, and there is no cost associated with the certification of a preregistration course except for the cost to develop the materials. Based on this, a navigator entity's cost to provide initial training for individual navigators employed by or associated with it could be as low as \$50 plus the cost of training materials and supplies, regardless of the number of individual navigators employed by or associated with the navigator entity.

In response to this comment and similar comments, expressing concerns regarding the registration fee, the department agrees to withdraw the proposed section that would establish registration and renewal fees and not include it in the adopted rule. The department agrees to revise the financial responsibility provision to address situations where a governmental entities performs or oversees the performance of the activities and duties of a navigator. The department makes this revision due to the fact that consumer protection concerns are minimized because a local government is already accountable to the public in ways a private organization is not.

The department does not intend to regulate use of the term "navigator" beyond its use associated with the health benefit exchange, and the applicability provision included the proposed

rule would prevent application to anyone not required to comply with the rules.

However, several commenters have expressed concern regarding limits on use of the term "navigator." In order to clarify the intent of the provision, the department has revised the adopted text addressing use of the term "navigator" to clarify that the section only applies to entities and individuals subject to the rules as provided for in §19.4003 (relating to Applicability). The department has done this by inserting a reference to §19.4003, which specifies those to whom the adopted rules apply. In addition, the department has revised the specific provision addressing use of the term "navigator" to prohibit "use of the term 'navigator' in a deceptive manner as part of an entity's name or website address or in an individual's title."

Comment: A commenter testified and submitted a written comment. The commenter said that the intent of SB 1795 was to provide additional regulation of navigators as defined by the Affordable Care Act only where federal regulation was lacking, the proposed rule defined navigators too broadly and would catch many essential community educators and the general public within its reach, and that there was no need to have these entities regulated and licensed by the department.

The commenter said the proposed rules would be too burdensome and would unnecessarily decrease the effectiveness of navigator organizations by requiring 40 hours of additional training on Texas Medicaid, ethics, and privacy protections. The commenter said the costs associated with the additional training were unnecessary when two of these three topics are available in free, state training modules in the Community Partner Program at the Health and Human Services Commission and that using additional federal tax dollars to duplicate training materials is wasteful.

The commenter said that the requirement for navigator entities to hold surety bonds violates the spirit of federal regulations, which prohibit states from requiring errors and omissions insurance of navigators. The commenter said that this requirement would place additional financial barriers on navigator organizations that are all funded by static federal grants, perhaps limiting the amount of staff that could be hired to serve families seeking health insurance.

The commenter said that the requirement that navigator entities were prohibited from providing advice to families regarding substantive and comparative benefits would be problematic because it is important that navigators be able to show differences between benefit summaries, cost sharing, and overall pricing. The commenter said that prohibiting navigators from performing this critical duty was counter to their purpose, and without changes the proposed rules would decrease the likelihood that families would find affordable health coverage.

Agency Response: The department has amended the definitions in the adopted rules. As proposed, the terms "individual navigator" and "navigator entity" were based on the statutory definition of "navigator" in Insurance Code §4154.002(3), which defines "navigator" as "an individual or entity performing the activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." Rather than using the words "activities and duties of a navigator" in the definitions for "individual navigator" and "navigator entity," the department used the defined term "navigator services." The defined term "navigator services" was intended to capture "activities and duties of a navigator as described by 42 USC §18031 or any regulation en-

acted under that section." However, some commenters did not understand that Insurance Code §4154.002(3) defines the term "navigator" by referencing the "activities and duties of a navigator," and use of the department term intended to capture that phrase resulted in further confusion.

To avoid confusion regarding the statutory basis for the definition of "individual navigator" and "navigator entity," the department has revised the definitions of the terms to remove the defined term "navigator services" and incorporate the statutory phrase "activities and duties of a navigator." In addition, the department has revised the definitions of these terms to include a citation to the specific subsection in 42 USC §18031 that sets out the duties of a navigator.

To ensure clarity regarding the statutory basis for the term "navigator services," the department has revised that term to use the statutory phrase "activities and duties of a navigator." The department also removed a reference to the adopted rules because all activities and duties described in them are based on statutory activities and duties; added a citation to the specific subsection in 42 USC §18031 that sets out duties of a navigator; added a citation to Insurance Code §4154.051(a), which is the source of the duties listed in the definition; and revised the list of duties in the definition to include only those most relevant to the need for regulation of navigators.

The department does not intend to regulate use of the term "navigator" beyond its use associated with the health benefit exchange, and the applicability provision included the proposed rule would prevent application to anyone not required to comply with the rules.

However, several commenters have expressed concern regarding limits on use of the term "navigator." In order to clarify the intent of the provision, the department has revised the adopted text addressing use of the term "navigator" to clarify that the section only applies to entities and individuals subject to the rules as provided for in §19.4003 (relating to Applicability). The department has done this by inserting a reference to §19.4003, which specifies those to whom the adopted rules apply. In addition, the department has revised the specific provision addressing use of the term "navigator" to prohibit "use of the term 'navigator' in a deceptive manner as part of an entity's name or website address or in an individual's title."

Requiring a certain number of hours of training as a prerequisite to a qualification is consistent with the requirements for navigators in other states. It also reflects the practice of several of the federal navigator grant recipients in Texas that the department spoke with in preparing the proposed rules. Many navigator entities employ individuals with additional training experience or require that those they hire as navigators receive training beyond what is required by the federal regulations. The department believes that the rules as adopted will ensure that navigators are qualified while providing them enough flexibility to choose the course they take to meet the preregistration education requirements.

As adopted, the rules do not require 40 hours of additional state-specific training. Instead, the adopted rules attribute 20 hours of federal education to the initial training requirement, and require 20 hours of state-specific training, for a total of 40 hours of training, with the specific requirements being contained in adopted §19.4008. The department determined that additional training was necessary based on input received during the department's review of the federal regulations and the rulemaking process.

Several navigator entities in Texas have independently decided that federal training requirements are insufficient and either employ individuals with specialized experience to serve as navigators or provide extra training beyond what is required by the federal government. To ensure the qualification of all navigators in Texas, the department incorporated requirements for additional training into the adopted rules.

Cost estimates in the rule proposal for navigator training vary between \$200 and \$800 dollars because the estimates were based on a cost range of \$5 to \$20 dollars per hour for 40 hours of state-specific training. In response to concerns in this and other similar comments about training costs and the amount of training required, the department has revised this requirement in the adopted rules from what the department proposed. As adopted, the rules only require 20 hours of state-specific training, which reduces the potential cost range for training to \$100 to \$400 dollars.

In addition, navigator entities that choose to develop their own training courses and have them certified by the department can reduce their cost more. Under 28 TAC Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Education Programs, and Certification Courses), the cost to become an approved course provider is \$50, and there is no cost associated with the certification of a preregistration course except for the cost to develop the materials. Based on this, a navigator entity's cost to provide initial training for individual navigators employed by or associated with it could be as low as \$50 plus the cost of training materials and supplies, regardless of the number of individual navigators employed by or associated with the navigator entity.

The department does not agree that the federal regulations alone are sufficient. The department determined that additional requirements were necessary based on a thorough review of standards in federal regulations, as required by SB 1795; input from stakeholders in Texas; and conferences with HHS staff. Notably, several navigator entities in Texas have independently decided that federal requirements are insufficient. They perform their own background checks, employ individuals with specialized experience to serve as navigators, and provide extra training beyond what is required by the federal regulations. To ensure consistent and uniform qualification of all navigators in Texas and meet the minimum standards established in Insurance Code §4154.051(c), the department has incorporated standards for additional vetting and training into the adopted rules.

The commenter appears to address proposed §19.4014(a)(5) when expressing concern that the proposed rule would prevent a navigator from helping a consumer understand and compare benefits to make an informed insurance choice. As proposed, §19.4014(a)(5) would prohibit a navigator from "provid[ing] advice regarding substantive benefits or comparative benefits of different health benefit plans." The intent of this provision was not to prevent navigators from discussing the coverage available under plans, but rather to prohibit navigators from making blanket statements regarding which plan is more beneficial. The choice of which plan is better should be made by the consumer, not the navigator. This prohibition is based on Insurance Code §4154.101(a)(4), which prohibits a navigator who is not licensed under Insurance Code Chapter 4054 (relating to Life, Accident, and Health Insurance Agents), from offering advice or advising consumers on which qualified health plan available through a health benefit exchange is preferable.

However, based on this comment and statements made by other commenters, it is apparent that proposed §19.4014(a)(5) needs to be revised for clarity. In the rule as adopted, the department revised the provision to track the language of Insurance Code §4154.101(a)(4). In addition, the adopted text follows this revised provision with a subsection that tracks Insurance Code §4154.101(b), which says a navigator is not prohibited under Insurance Code §4154.101 from "providing information and services consistent with the mission of a navigator."

Comment: A commenter provided written and hearing testimony critical of the amount of additional training required for navigators in the department's proposed rules. The commenter said the requirements should be more comparable to the training required currently for Medicare Benefits Counselors.

The commenter said the cost of the additional training was excessive when existing state training could be provided at no cost. The commenter was concerned that the training requirements would have to be completed by March 1, 2014, only 30 days before the end of open enrollment. The commenter did not believe that navigators were insufficiently trained, and recommended extension of the deadline or effective date of the rules until March 31, 2014, to allow adequate opportunity to transition to the additional standards.

Agency Response: Based on this and similar comments from other commenters, the department has adopted training requirements that require a lower number of state-specific training hours than were included in the rule proposal. As adopted, the rules do not require 40 hours of additional state-specific training. Instead, the adopted rules attribute 20 hours of federal education to the initial training requirement, and require 20 hours of state-specific training, for a total of 40 hours of training, with the specific requirements being contained in adopted §19.4008. The department determined that additional training was necessary based on input received during the department's review of the federal regulations and the rulemaking process. Several navigator entities in Texas have independently decided that federal training requirements are insufficient and either employ individuals with specialized experience to serve as navigators or provide extra training beyond what is required by the federal government. To ensure the qualification of all navigators in Texas, the department incorporated requirements for additional training into the adopted rules.

Cost estimates in the rule proposal for navigator training vary between \$200 and \$800 dollars because the estimates were based on a cost range of \$5 to \$20 dollars per hour for 40 hours of state-specific training. In response to concerns in this and other similar comments about training costs and the amount of training required, the department has revised this requirement in the adopted rules from what the department proposed. As adopted, the rules only require 20 hours of state-specific training, which reduces the potential cost range for training to \$100 to \$400 dollars.

In addition, navigator entities that choose to develop their own training courses and have them certified by the department can reduce their cost more. Under 28 TAC Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Education Programs, and Certification Courses), the cost to become an approved course provider is \$50, and there is no cost associated with the certification of a preregistration course except for the cost to develop the materials. Based on this, a navigator entity's cost to provide initial training for individual navigators employed by or associated with it could be as low as \$50 plus the

cost of training materials and supplies, regardless of the number of individual navigators employed by or associated with the navigator entity.

The effective date of the rule will be February 10, 2014. This provides three weeks before the date navigators need to be registered. However, the department provided notice of the commissioner's adoption of these rules on the department's website on January 21, 2014. Nothing prevents a navigator from submitting an application for registration prior to the effective date of the rule, so navigators have an additional 20 days to prepare for compliance with the registration requirement before the effective date. In addition, the adopted rules do not require that navigators complete and provide proof of the department-certified training required by the adopted rules until May 1, 2014. Completing the necessary 20 hours of state-specific training will be the most time-consuming element of the registration process, but under adopted §19.4008(g) navigators do not need to complete or provide proof of completion of this training until May 1, which is 30 days after the end of the open enrollment period.

The department believes the need for the consumer protections included in the adopted rule warrants the March 1 applicability date, and that allowing a two-month delay in showing proof of state-specific training provides sufficient time for navigators to register with the department, obtain the required training, and continue to provide assistance to consumers throughout the current open enrollment period.

Comment: A commenter said the department faced a challenge in navigating the various pressures regarding implementation of the various federal health benefit exchanges. The commenter stated that SB 1795 required a state solution to ensure that Texans are able to find and apply for affordable health coverage under any federally run health benefit exchange, while helping consumers in this state; and that it was imperative to ensure the confidentiality and appropriate handling of protected information as well as training sufficient to provide accurate assistance to those seeking help.

The commenter expressed three broad concerns and proposed several recommended solutions to address those concerns. First, the commenter asserted that the scope of the proposed rules and their application were overly broad, and that the proposed definition of "navigator" went beyond the federal definition. The commenter stated that the overbroad definition could interfere with existing qualified individuals and groups whose focus is to help the uninsured or underinsured to better understand and access health care, making the entire system more cost-effective by providing access to care at the right time and place. The commenter recommended that the rule define "navigators" as "ACA Navigators" to help narrow the scope while providing targeted assurances.

Second, the commenter expressed concern that the hours and costs of training proposed are excessive and may actually work contrary to the intent of SB 1795 and the basis for the rule. The commenter offered the training required currently for Medicaid/CHIP navigators, who are certified by the Texas Health and Human Services Commission, as a model, noting that the commenter had no reports of systematic problems with that training in providing appropriate safeguards.

The commenter also expressed concern about the impact of the cost of training on funding for individual hospital districts. The commenter stated that hospital district members are funded by local tax dollars, and that the proposed rules would significantly

impact their ability to provide the necessary outreach, education, and enrollment activities, which would further impact their ability to provide the appropriate and necessary health care services to the populations being served. The commenter asserted that each navigator entity that oversees navigators could easily run in the tens of thousands of dollars, and would ultimately be shouldered by local taxpayers.

Third, the commenter expressed concern about the effective date of the rules. The commenter stated that, with a proposed effective date of March 1, 2014, there is a very narrow window to complete the tasks needed for compliance; and that it is unlikely that navigators would be able to complete all the requirements in that time. In that event, the commenter's member organizations that were unable to meet the requirements in that time would be unable to provide the necessary and needed outreach and education services. The commenter proposed that the rules' start date be moved to November 15, 2014, which is the start date for the next open enrollment period, to allow time for the rules to be fully implemented before the 2015 enrollment period begins.

The commenter recommended that the department consider the financial impact on local and statewide taxpayers when drafting the final rules. The commenter stated that defining "navigators" too broadly could limit vulnerable populations' access to information about coverage and could have a direct financial impact on local communities and state taxpayers. When people get into care sooner and are educated about the best use of health care, it improves efficiency and effectiveness of that care.

The commenter suggested ensuring enforcement for bad actors to address individual performance or fraud issues rather than requiring excessive costly training for everybody within that effect, potentially limiting understanding and access to information about health care.

Agency Response: The department appreciates the comments and acknowledges the challenges of balancing the various competing interests when implementing the ACA. The department believes that the rules, as adopted, ensure that consumers are able to find and apply for affordable health coverage, that protected information is kept confidential and handled appropriately, and that navigators are trained to provide competent assistance to consumers seeking help.

As proposed, the terms "individual navigator" and "navigator entity" were based on the statutory definition of "navigator" in Insurance Code §4154.002(3), which defines "navigator" as "an individual or entity performing the activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." Rather than using the words "activities and duties of a navigator" in the definitions for "individual navigator" and "navigator entity," the department used the defined term "navigator services." The defined term "navigator services" was intended to capture "activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." However, some commenters did not understand that Insurance Code §4154.002(3) defines the term "navigator" by referencing the "activities and duties of a navigator," and use of the department term intended to capture that phrase resulted in further confusion.

To avoid confusion regarding the statutory basis for the definition of "individual navigator" and "navigator entity," the department has revised the definitions of the terms to remove the defined term "navigator services" and incorporate the statutory phrase

"activities and duties of a navigator." In addition, the department has revised the definitions of these terms to include a citation to the specific subsection in 42 USC §18031 that sets out the duties of a navigator.

To ensure clarity regarding the statutory basis for the term "navigator services," the department has revised that term to use the statutory phrase "activities and duties of a navigator." The department also removed a reference to the adopted rules because all activities and duties described in them are based on statutory activities and duties; added a citation to the specific subsection in 42 USC §18031 that sets out duties of a navigator; added a citation to Insurance Code §4154.051(a), which is the source of the duties listed in the definition; and revised the list of duties in the definition to include only those most relevant to the need for regulation of navigators.

The department does not intend to regulate use of the term "navigator" beyond its use associated with the health benefit exchange, and the applicability provision included the proposed rule would prevent application to anyone not required to comply with the rules.

However, several commenters have expressed concern regarding limits on use of the term "navigator." In order to clarify the intent of the provision, the department has revised the adopted text addressing use of the term "navigator" to clarify that the section only applies to entities and individuals subject to the rules as provided for in §19.4003 (relating to Applicability). The department has done this by inserting a reference to §19.4003, which specifies those to whom the adopted rules apply. In addition, the department has revised the specific provision addressing use of the term "navigator" to prohibit "use of the term 'navigator' in a deceptive manner as part of an entity's name or website address or in an individual's title."

The department agrees that the proposed rules would apply to more than just recipients of federal grants under the ACA. This applicability is consistent with the definition for "navigator" contained in SB 1795, which says, "navigator means an individual or entity performing the activities and duties of a navigator as described by 42 USC §18031." Application of the rules consistent with the SB 1795 definition of "navigator" means the adopted registration process will apply to those who want to perform the activities and duties of a navigator as described by 42 USC §18031, but who did not apply for, or applied for but did not receive, a federal navigator grant. One such organization has contacted the department several times since passage of the ACA, asking how it could receive authorization to act as a navigator.

The availability of more than just grant-recipient navigators in Texas will broaden the pool of navigators able to help Texans find and apply for health coverage under the exchange, which is consistent with the purpose of SB 1795. Insurance Code Chapter 4154 states: "[T]he purpose of this chapter is to provide a state solution to ensure that Texans are able to find and apply for affordable health coverage under any federally run health benefit exchange, while helping consumers in this state." The department determined that the availability of more navigators in Texas would increase the likelihood that members of the uninsured population in this state would have assistance in finding healthcare through the exchange.

Application of the rules consistent with the SB 1795 definition of "navigator" also means that the standards adopted under the rules will apply equally to grant recipient and non-grant recipient navigators. For example, navigators with the organization

that has contacted the department will need to have the same amount of education and training as navigators with any of the federal grant recipients in Texas. This will create a level playing field for all navigators in the state, and will help ensure that consumers receive enrollment assistance in a health benefit exchange from a qualified navigator.

As adopted, the rules do not require 40 hours of additional state-specific training. Instead, the adopted rules attribute 20 hours of federal education to the initial training requirement, and require 20 hours of state-specific training, for a total of 40 hours of training, with the specific requirements being contained in adopted §19.4008. The department determined that additional training was necessary based on input received during the department's review of the federal regulations and the rulemaking process. Several navigator entities in Texas have independently decided that federal training requirements are insufficient and either employ individuals with specialized experience to serve as navigators or provide extra training beyond what is required by the federal government. To ensure the qualification of all navigators in Texas, the department incorporated requirements for additional training into the adopted rules.

Cost estimates in the rule proposal for navigator training vary between \$200 and \$800 dollars because the estimates were based on a cost range of \$5 to \$20 dollars per hour for 40 hours of state-specific training. In response to concerns in this and other similar comments about training costs and the amount of training required, the department has revised this requirement in the adopted rules from what the department proposed. As adopted, the rules only require 20 hours of state-specific training, which reduces the potential cost range for training to \$100 to \$400 dollars.

In addition, navigator entities that choose to develop their own training courses and have them certified by the department can reduce their cost more. Under 28 TAC Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Education Programs, and Certification Courses), the cost to become an approved course provider is \$50, and there is no cost associated with the certification of a preregistration course except for the cost to develop the materials. Based on this, a navigator entity's cost to provide initial training for individual navigators employed by or associated with it could be as low as \$50 plus the cost of training materials and supplies, regardless of the number of individual navigators employed by or associated with the navigator entity.

The department believes that the rules, as adopted, balance the competing goals of ensuring that consumers are served, and served well, with keeping costs to a minimum. Without proper training requirements in place, the department would not be able to ensure that navigators were equipped to provide consumers with accurate information and competent assistance, or that they were trained to handle protected information properly to ensure consumers' privacy.

The effective date of the rule will be February 10, 2014. This provides three weeks before the date navigators need to be registered. However, the department provided notice of the commissioner's adoption of these rules on the department's website on January 21, 2014. Nothing prevents a navigator from submitting an application for registration prior to the effective date of the rule, so navigators have an additional 20 days to prepare for compliance with the registration requirement before the effective date. In addition, the adopted rules do not require that

navigators complete and provide proof of the department-certified training required by the adopted rules until May 1, 2014. Completing the necessary 20 hours of state-specific training will be the most time-consuming element of the registration process, but under adopted §19.4008(g) navigators do not need to complete or provide proof of completion of this training until May 1, which is 30 days after the end of the open enrollment period.

The department believes the need for the consumer protections included in the adopted rule warrants the March 1 applicability date, and that allowing a two-month delay in showing proof of state-specific training provides sufficient time for navigators to register with the department, obtain the required training, and continue to provide assistance to consumers throughout the current open enrollment period.

The department believes that enforcement actions and training requirements are both essential components of regulation. The department will take enforcement or fraud action against any person or entity that does not comply with the statutes and rules applicable to it or its actions. However, the department believes that effective training requirements are key to preventing compliance problems and minimizing consumer harm. The department believes that consumers would be better served by having well-trained navigators than they would be if the department only took action after consumers had been harmed by a bad actor's misconduct.

Comment: One commenter recommended that the education requirements include Texas CHIP in addition to Texas Medicaid; reduce the number of hours of ethics training; include training on basic insurance terminology, how insurance works, and processes insurers use to meet regulatory and statutory requirements; and include new privacy requirements that are effective this year, including those associated with "business associates agreements." Additionally, the commenter suggested increasing the financial responsibility requirements to a surety bond amount of \$100,000; a liability policy of \$250,000, or a deposit of \$50,000.

The commenter also indicated that higher policy limits should be considered if the additional cost for the instrument is negligible. The commenter further stated that the importance of the navigators complying with the financial responsibility requirements cannot be understated due to the numerous, easily documented examples of consumers' difficulties in enrolling in the Marketplace. The commenter then concluded by asking several questions regarding who would bear the cost if as a result of a navigator's assistance being wrong, a consumer suffers an extraordinary medical expense.

Agency Response: The department appreciates the comments provided related to the content of the preregistration course. Additional content regarding Texas CHIP, insurance terminology, and how insurance works has been incorporated into the requirements for the pre-registration course in the adopted rule.

Understanding the processes that carriers use to meet regulatory and statutory requirements is outside the scope of services that navigators would provide. Therefore, the department declines to make a change related to that recommendation. The department also declines to make the change associated with including specific instruction to include changes effective this year in HIPAA-HITECH areas of concern since the requirements will need to be flexible enough to capture potential future changes as well. The requirement for training on "applicable privacy requirements" would include the topic suggested by the commenter.

The department concurs that having a financial responsibility requirement is an important part of protecting Texas consumers. However, The department declines to make the modifications suggested by the commenter due to the material increase in the cost of compliance associated with the suggestion.

Comment: A commenter provided written testimony to the effect that the proposed rules go beyond the SB 1795 goal of consumer protection and will actually have the effect of keeping people from accessing affordable health insurance. The commenter criticized the proposed rules for creating overly broad definitions of "enrollment assistance in a health benefit exchange," "individual navigator," and "navigator services."

The commenter wrote that the definitions, combined with §19.4003 and §19.4004, could require any individual who performs any of the "navigator services" or provides "enrollment assistance" to register with the department and comply with all the navigator requirements. The commenter suggested addressing this issue by limiting the definitions and applicability of the proposed rule.

The commenter wrote that the surety bond requirement creates great difficulty for non-profit entities. The fact that federal rules preempt state requirements for navigators to carry errors and omissions insurance suggests that requirements for surety bonds violated the spirit of the federal law.

The commenter wrote that contrary to what the fiscal note for SB 1795 indicated, the proposed rules would cost each navigator hundreds of dollars in application and registration fees.

The commenter wrote that the additional 40 hours of "proprietary training," which the proposed rule requires, are an unnecessary addition to the 20 to 30 hours of training which the federal regulations require. While acknowledging the importance of the subject areas of Texas Medicaid, privacy, and ethics instruction, the commenter stated that the actual number of hours required seems arbitrary and high compared with training for similar state programs such as the Health Insurance Counseling and Advocacy Program.

The commenter asked the department how it chose the 40 hour requirement and the division of the training topics and stated that training should focus on the mastery of specific content rather than on the number of hours spent in training.

The commenter wrote that navigators would have difficulty complying with the prohibition in §19.4014 against recommending "a specific health benefit plan" and providing "advice regarding substantive benefits or comparative benefits of different health benefit plans." Consumers may need the advice of a navigator in selecting a metal tier in which to look for a plan and then need additional advice in selecting a plan within that tier. Because other provisions in the proposal address potential conflicts of interest, the prohibitions in §19.4014(a)(4) and (5) are unnecessary.

Agency Response: The department disagrees with the comments that the rules will have the effect of keeping citizens from enrolling in affordable health insurance and that the registration fees are too high.

As proposed, the terms "individual navigator" and "navigator entity" were based on the statutory definition of "navigator" in Insurance Code §4154.002(3), which defines "navigator" as "an individual or entity performing the activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." Rather than using the words "activities and duties of a navigator" in the definitions for "individual navi-

gator" and "navigator entity," the department used the defined term "navigator services." The defined term "navigator services" was intended to capture "activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." However, some commenters did not understand that Insurance Code §4154.002(3) defines the term "navigator" by referencing the "activities and duties of a navigator," and use of the department term intended to capture that phrase resulted in further confusion.

To avoid confusion regarding the statutory basis for the definition of "individual navigator" and "navigator entity," the department has revised the definitions of the terms to remove the defined term "navigator services" and incorporate the statutory phrase "activities and duties of a navigator." In addition, the department has revised the definitions of these terms to include a citation to the specific subsection in 42 USC §18031 that sets out the duties of a navigator.

To ensure clarity regarding the statutory basis for the term "navigator services," the department has revised that term to use the statutory phrase "activities and duties of a navigator." The department also removed a reference to the adopted rules because all activities and duties described in them are based on statutory activities and duties; added a citation to the specific subsection in 42 USC §18031 that sets out duties of a navigator; added a citation to Insurance Code §4154.051(a), which is the source of the duties listed in the definition; and revised the list of duties in the definition to include only those most relevant to the need for regulation of navigators.

In order to address concerns regarding the term "enrollment assistance in a health benefit exchange," the department adopts a revised definition by replacing the phrase "completing the application for health coverage affordability programs" with the words "applying for or enrolling in health coverage affordability programs."

The purpose of this change is to clarify that definition contemplates assistance in the specific act of applying for health coverage affordability programs available through a health benefit exchange, not merely assistance in completing an application form when the form is used for reasons other than plying for health coverage in the exchange. To further clarify this definition, the department has also incorporated in the definition additional examples of what would constitute providing assistance in the act of applying for health coverage affordability programs available through a health benefit exchange.

The intent of the financial responsibility requirement is to protect individuals against wrongful acts, misrepresentations, errors, omissions, or negligence of the navigator entity, its employees, or navigators associated or employed with the navigator entity. This is a necessary accountability standard for regulation of navigators that is lacking in federal standards. The department acknowledges that demonstrating compliance with the financial responsibility requirement may result in costs for navigator entities. In response to this and other similar comments regarding the potential cost associated with the requirement, the department has reduced the surety bond amount included in §19.4010(a)(1) to \$25,000, which would reduce the cost of compliance for any navigator entity that selected that option for demonstrating financial responsibility.

The department did not address compliance costs for navigators in the fiscal note for SB 1795 for several reasons. First, a fiscal note on a bill only addresses costs to the agency to imple-

ment a bill. The department generally does not pay compliance costs for entities or individuals who seek an authorization issued by the department, so the department would not include those costs in a fiscal note. In addition, there were no federal navigator regulations in place at the time the fiscal note was drafted, and no department determination that the federal regulations were insufficient, so it was not clear what, if any, compliance requirements would be adopted under SB 1795.

The department appreciates the commenter's support of the topics included in the proposed preregistration course.

As adopted, the rules do not require 40 hours of additional state-specific training. Instead, the adopted rules attribute 20 hours of federal education to the initial training requirement, and require 20 hours of state-specific training, for a total of 40 hours of training, with the specific requirements being contained in adopted §19.4008. The department determined that additional training was necessary based on input received during the department's review of the federal regulations and the rulemaking process. Several navigator entities in Texas have independently decided that federal training requirements are insufficient and either employ individuals with specialized experience to serve as navigators or provide extra training beyond what is required by the federal government. To ensure the qualification of all navigators in Texas, the department incorporated requirements for additional training into the adopted rules.

Under the proposed rules, the review and approval process for training courses will be the same as the department applies for insurance adjuster prelicensing courses. The examination for a course certified under the process must be administered by the course provider as a component of the course. In order to clarify the different methods that may be used for navigator education courses, proposed §19.4009 was modified to insert a new subsection (c) into the text stating that the education course format "may consist of classroom courses, classroom equivalent courses, self-study courses, or one time event courses..." The department proposed and adopts this approach to ensure availability of navigator training options across the state, so that navigators do not need to travel to satisfy them. It also means navigator registrants will not need to use a specific vendor for course work or exams or travel hundreds of miles to take an exam. Under this approach, a navigator entity may even choose to apply with the department to become a course provider and develop its own course material. Cost estimates in the rule proposal for navigator training vary between \$200 and \$800 dollars because the estimates were based on a cost range of \$5 to \$20 dollars per hour for 40 hours of state-specific training. In response to concerns in this and other similar comments about training costs and the amount of training required, the department has revised this requirement in the adopted rules from what the department proposed. As adopted, the rules only require 20 hours of state-specific training, which reduces the potential cost range for training to \$100 to \$400 dollars.

In addition, navigator entities that choose to develop their own training courses and have them certified by the department can reduce their cost more. Under 28 TAC Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Education Programs, and Certification Courses), the cost to become an approved course provider is \$50, and there is no cost associated with the certification of a preregistration course except for the cost to develop the materials. Based on this, a navigator entity's cost to provide initial training for individual navigators employed by or associated with it could be as low as \$50 plus the

cost of training materials and supplies, regardless of the number of individual navigators employed by or associated with the navigator entity.

In response to this comment and similar comments, expressing concerns regarding the registration fee, the department agrees to withdraw the proposed section that would establish registration and renewal fees and not include it in the adopted rule.

The commenter appears to address proposed §19.4014(a)(5) when expressing concern that the proposed rule would prevent a navigator from helping a consumer understand and compare benefits to make an informed insurance choice. As proposed, §19.4014(a)(5) would prohibit a navigator from "provid[ing] advice regarding substantive benefits or comparative benefits of different health benefit plans." The intent of this provision was not to prevent navigators from discussing the coverage available under plans, but rather to prohibit navigators from making blanket statements regarding which plan is more beneficial. The choice of which plan is better should be made by the consumer, not the navigator. This prohibition is based on Insurance Code §4154.101(a)(4), which prohibits a navigator who is not licensed under Insurance Code Chapter 4054 (relating to Life, Accident, and Health Insurance Agents), from offering advice or advising consumers on which qualified health plan available through a health benefit exchange is preferable.

However, based on this comment and statements made by other commenters, it is apparent that proposed §19.4014(a)(5) needs to be revised for clarity. In the rule as adopted, the department revised the provision to track the language of Insurance Code §4154.101(a)(4). In addition, the adopted text follows this revised provision with a subsection that tracks Insurance Code §4154.101(b), which says a navigator is not prohibited under Insurance Code §4154.101 from "providing information and services consistent with the mission of a navigator."

Comment: A commenter testified that proposed §19.4014(5) prohibits navigators from providing advice regarding substantive benefits or comparative benefits of different health plans. The commenter further stated that the proposed rule would prevent navigators from fulfilling their primary responsibility, which is to advise and guide consumers in understanding and comparing benefits so they can make an informed decision.

The commenter said that because insurance was complicated, consumers need help navigating their options which is what navigators were intended to do. The commenter stated that this was not the same as making a recommendation to a consumer to buy a specific plan.

The commenter further stated that If this rule remains, it essentially strips the purpose of having health navigators in the first place.

The commenter stated that §19.4014(1) prohibits navigators from engaging in electioneering activities or finance or otherwise supporting the candidacy of an individual for government positions (including campaigning, persuading, promoting, advertising, or coordinating with any political party, committee, or candidate). The commenter stated that it was important for navigators to remain publicly impartial and objective in elections; however, the commenter said there should be clarifying language that exempts nonpartisan voter education, outreach, and turnout from this rule. The commenter states that, in addition to high rates of uninsured, many communities in Texas are also high in voter apathy. The commenter stated that some individuals and entities that are involved in increasing enrollment

in the health insurance exchanges may also be interested in increasing voter engagement, which the commenter believes is a civic responsibility.

The commenter said the additional 40 hours of training required by the proposed rule on top of the 20-30 hours required by federal training was excessive. The commenter stated that this requirement was far more training than other similar community-based enrollment assistant positions in Texas. The commenter stated that the Community Partner Program only requires four to five hours of training, the Health Insurance Advocacy and Counseling Program requires 25 hours of training, and health insurance agents do not require any training.

The commenter stated that a preliminary analysis by the Center for Public Policy Priorities of the ACA navigator training requirements in other states appears to show that the proposed Texas rules would require many more hours than any other state. The commenter further stated that other than Texas, Wisconsin has the highest requirement with 16 hours of state training on top of federal training.

The commenter stated that Texas was proposing more than twice as many additional state training hours. The commenter further stated that although additional state-specific education may be necessary above what the federal government requires, the commenter suggests that the department consider existing training requirements for similar community-based enrollment assistant positions and work with the Health and Human Services Commission, other relevant state agencies, and the navigator entities to develop and implement appropriate training and testing that is not duplicative and excessive.

The commenter stated that §19.4015 limits use of the term "navigator" unless registered with the department as a navigator entity or an individual navigator. The commenter stated that this is a widely-used term that has been in use for various programs even before it was used in the Affordable Care Act legislation.

The commenter stated that the rules should be amended to clarify that the prohibition only applies within the context of health insurance application assistance. The commenter expressed concern that the navigator rules are overly broad and may be interpreted to require registration of anyone—family members, neighbors, co-workers, a clergy person.

The commenter expressed concern with the additional fees that would have to be paid by navigator individuals and navigator entities, and would like to see these fees eliminated. The commenter states that navigator entities have received set amounts of grant money from the federal government to help provide free assistance to the poor and uninsured.

The commenter said navigators are prohibited from charging these individuals any fees for the services they provide. The commenter states that the additional fees, which will range from \$320 to \$980, would be excessive and burdensome.

The commenter estimates that the City of Houston, with its 16 navigators, would have to spend as much as \$14,300 for registrations, fingerprinting, and training. The commenter asked where would the navigator entities get the additional funding in the next few months to implement the department's requirements. The commenter said these fees would divert money to the department from federal grants that were meant to provide services to the poor. The commenter said the department was not authorized by SB 1795 to charge these fees.

The commenter said the federal training modules include how to provide culturally and linguistically appropriate services. The commenter requested that the department collaborate with the Health and Human Services Commission to improve the Spanish-language training modules, which are reportedly not fully functional. The commenter also recommended that the department allow a 50 percent extension of time on the state exam for those who speak English as a second language, since it is also an accommodation that HHS allows for the federal exam.

The commenter said the evidence of financial responsibility could be excessive or unnecessary. For example, in the case of the City of Houston, and other government entities, which can self-insure, the requirements in the proposed rules were not necessary.

The commenter said the implementation date should be extended until after the enrollment period ends, when navigators have time to begin the training and registration process. The commenter noted that under the proposed rules, navigators must comply with most of the requirements by March 1, 2014, which is the start of the last month of enrollment. The commenter said these last three months would be a critical time for enrollment activity and the March 1 implementation date would largely serve to slow down and undermine the process of enrolling individuals.

Agency Response: The commenter appears to address proposed §19.4014(a)(5) when expressing concern that the proposed rule would prevent a navigator from helping a consumer understand and compare benefits to make an informed insurance choice. As proposed, §19.4014(a)(5) would prohibit a navigator from "provid[ing] advice regarding substantive benefits or comparative benefits of different health benefit plans." The intent of this provision was not to prevent navigators from discussing the coverage available under plans, but rather to prohibit navigators from making blanket statements regarding which plan is more beneficial. The choice of which plan is better should be made by the consumer, not the navigator. This prohibition is based on Insurance Code §4154.101(a)(4), which prohibits a navigator who is not licensed under Insurance Code Chapter 4054 (relating to Life, Accident, and Health Insurance Agents), from offering advice or advising consumers on which qualified health plan available through a health benefit exchange is preferable.

However, based on this comment and statements made by other commenters, it is apparent that proposed §19.4014(a)(5) needs to be revised for clarity. In the rule as adopted, the department revised the provision to track the language of Insurance Code §4154.101(a)(4). In addition, the adopted text follows this revised provision with a subsection that tracks Insurance Code §4154.101(b), which says a navigator is not prohibited under Insurance Code §4154.101 from "providing information and services consistent with the mission of a navigator."

Insurance Code §4154.101(a)(6) provides that in the course of acting as a navigator, a navigator may not engage in any electioneering activities or finance or otherwise support the candidacy of a person for an office in the legislative, executive, or judicial branch of state government, or of the government of the United States, or any political subdivision of this state. Activities that do not fall under Insurance Code §4154.101(a)(6), are not considered electioneering activities, subject to new §19.4013(a)(1).

As adopted, the rules do not require 40 hours of additional state-specific training. Instead, the adopted rules attribute 20 hours of federal education to the initial training requirement, and require 20 hours of state-specific training, for a total of 40 hours of training, with the specific requirements being contained in adopted §19.4008. The department determined that additional training was necessary based on input received during the department's review of the federal regulations and the rulemaking process. Several navigator entities in Texas have independently decided that federal training requirements are insufficient and either employ individuals with specialized experience to serve as navigators or provide extra training beyond what is required by the federal government. To ensure the qualification of all navigators in Texas, the department incorporated requirements for additional training into the adopted rules.

The department does not intend to regulate use of the term "navigator" beyond its use associated with the health benefit exchange, and the applicability provision included the proposed rule would prevent application to anyone not required to comply with the rules.

However, several commenters have expressed concern regarding limits on use of the term "navigator." In order to clarify the intent of the provision, the department has revised the adopted text addressing use of the term "navigator" to clarify that the section only applies to entities and individuals subject to the rules as provided for in §19.4003 (relating to Applicability). The department has done this by inserting a reference to §19.4003, which specifies those to whom the adopted rules apply. In addition, the department has revised the specific provision addressing use of the term "navigator" to prohibit "use of the term 'navigator' in a deceptive manner as part of an entity's name or website address or in an individual's title."

As proposed, the terms "individual navigator" and "navigator entity" were based on the statutory definition of "navigator" in Insurance Code §4154.002(3), which defines "navigator" as "an individual or entity performing the activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." Rather than using the words "activities and duties of a navigator" in the definitions for "individual navigator" and "navigator entity," the department used the defined term "navigator services." The defined term "navigator services" was intended to capture "activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." However, some commenters did not understand that Insurance Code §4154.002(3) defines the term "navigator" by referencing the "activities and duties of a navigator," and use of the department term intended to capture that phrase resulted in further confusion.

To avoid confusion regarding the statutory basis for the definition of "individual navigator" and "navigator entity," the department has revised the definitions of the terms to remove the defined term "navigator services" and incorporate the statutory phrase "activities and duties of a navigator." In addition, the department has revised the definitions of these terms to include a citation to the specific subsection in 42 USC §18031 that sets out the duties of a navigator.

To ensure clarity regarding the statutory basis for the term "navigator services," the department has revised that term to use the statutory phrase "activities and duties of a navigator." The department also removed a reference to the adopted rules because all activities and duties described in them are based on statutory activities and duties; added a citation to the specific subsection

in 42 USC §18031 that sets out duties of a navigator; added a citation to Insurance Code §4154.051(a), which is the source of the duties listed in the definition; and revised the list of duties in the definition to include only those most relevant to the need for regulation of navigators.

In adopted §19.4003(f), the department has clarified the rule's applicability to state that it does not apply to "an individual who only provides navigator services to a person or persons related to the individual within the third degree by consanguinity or within the second degree by affinity, as determined under Government Code Chapter 573, Subchapter B."

Applicability of the rules to specific individuals and the need for the department to take action under the rules depends on the facts of the situation. This is the case for anyone regulated by the department, not just navigators. In most instances it may be clear that someone is performing an act regulated by the department, but at other times it may not be apparent if someone is acting as an agent or someone is performing the business of insurance. In those instances, the department must look closely at the facts of the case, and may even need to proceed to a contested case hearing to conclusively determine if an act is regulated by the department.

For example, there may not be a role for the department in the interaction of the commenter with the commenter's neighbor. If an individual is not purporting to be a navigator and the individual is not taking so many acts that the individual's neighbor believes the individual is a navigator, or is relying on the qualifications of the individual as a navigator, the rules may not be applicable to the individual. However, in other instances someone might deceptively pose as a navigator in an attempt to access a neighbor's private information, or someone may honestly want to act as a navigator to assist neighbors, but not actually understand how to provide such assistance. In those situations, the rules may be applicable and may be necessary to ensure consumer protection.

In response to this comment and similar comments, expressing concerns regarding the registration fee, the department agrees to withdraw the proposed section that would establish registration and renewal fees and not include it in the adopted rule.

Cost estimates in the rule proposal for navigator training vary between \$200 and \$800 dollars because the estimates were based on a cost range of \$5 to \$20 dollars per hour for 40 hours of state-specific training. In response to concerns in this and other similar comments about training costs and the amount of training required, the department has revised this requirement in the adopted rules from what the department proposed. As adopted, the rules only require 20 hours of state-specific training, which reduces the potential cost range for training to \$100 to \$400 dollars.

In addition, navigator entities that choose to develop their own training courses and have them certified by the department can reduce their cost more. Under 28 TAC Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Education Programs, and Certification Courses), the cost to become an approved course provider is \$50, and there is no cost associated with the certification of a preregistration course except for the cost to develop the materials. Based on this, a navigator entity's cost to provide initial training for individual navigators employed by or associated with it could be as low as \$50 plus the cost of training materials and supplies, regardless of the number

of individual navigators employed by or associated with the navigator entity.

These rules do not establish a state examination for navigators. Instead, the examination will be a component of the course. The department declines to make a change to the rule prescribing specific language requirements for navigator training courses or requirements that apply differently for speakers of different languages, because the department will apply the same requirements for navigator training courses as apply to all courses certified by the department. The department does not have preferred or required languages for courses submitted to the department for certification.

The department does not agree that the evidence of financial responsibility is excessive or unnecessary. However, in response to comments, adopted new §19.4010 is amended from the proposal to provide that evidence of financial responsibility may be shown by providing evidence to the department that the navigator entity is a self-insured governmental entity. The department further amends §19.4010, as proposed, to provide that evidence of financial responsibility may be shown by obtaining a surety bond in the amount of \$25,000 as opposed to the \$50,000 amount that was included in the proposal. The other methods of meeting the financial responsibility requirement which include a professional liability policy insuring the navigator entity against errors and omissions in at least \$100,000, with a deductible of not more than 10 percent of the full amount of the policy, and depositing \$25,000 in securities backed by the full faith and credit of the United States government with the comptroller are also included in the adopted section.

The effective date of the rule will be February 10, 2014. This provides three weeks before the date navigators need to be registered. However, the department provided notice of the commissioner's adoption of these rules on the department's website on January 21, 2014. Nothing prevents a navigator from submitting an application for registration prior to the effective date of the rule, so navigators have an additional 20 days to prepare for compliance with the registration requirement before the effective date. In addition, the adopted rules do not require that navigators complete and provide proof of the department-certified training required by the adopted rules until May 1, 2014. Completing the necessary 20 hours of state-specific training will be the most time-consuming element of the registration process, but under adopted §19.4008(g) navigators do not need to complete or provide proof of completion of this training until May 1, which is 30 days after the end of the open enrollment period.

The department believes the need for the consumer protections included in the adopted rule warrants the March 1 applicability date, and that allowing a two-month delay in showing proof of state-specific training provides sufficient time for navigators to register with the department, obtain the required training, and continue to provide assistance to consumers throughout the current open enrollment period.

The department disagrees with the commenter's statement that health insurance agents do not require any training, and notes that the current rules for agent and adjuster continuing education and prelicensing training can be found at 28 TAC §19.602 and §§19.1001 - 19.1018; and that there is detailed information on licensing and education requirements for agents, adjusters, and providers available on the department's website at www.tdi.texas.gov/licensing/agent/agcehome.html. The department notes that, generally, licensees must earn 30 hours of con-

tinuing education, with 2 hours of ethics and consumer protection for each licensing period.

Comment: A commenter said that with little more than two months left in the enrollment period, many of the proposed rules would hamper the work of navigators while in-person assisters and application counselors would continue to enroll community members, since application counselors are not subject to the same requirements as navigators. The commenter stated that it requires background checks and proof of U.S. citizenship or legal residency for all its navigators, and that the navigators have received national, state, and county background checks.

The commenter expressed the belief that the training required by the proposed rule is excessive and that the commenter's organization already provides sufficient training for navigators. Additionally, the commenter noted that its navigators provide consumers with a consent form that states that the navigator will keep personal information private and secure, and will not store personal information except for limited reasons, such as taking the consumer's name and phone number when arranging for an appointment. The commenter's navigators are prohibited from storing personal information on their laptops and must show the consumer they have deleted any personal documents from the laptop.

The commenter expressed the belief that state registration fees, fingerprint background checks, and additional fee-based education requirements would cause it budget deficits and that every hour that navigators spend in extra classes is one that could be spent serving people who need health care coverage. The commenter expressed the belief that it would take two to three months to adjust its grants for state requirements and requested that implementation of state regulations and fees begin in its next grant cycle, or no earlier than August 2014.

Agency Response: The department disagrees that in the time left for enrollment the as adopted rule requirements and timeline will hamper the work of navigators assisting consumers in obtaining healthcare coverage.

The effective date of the rule will be February 10, 2014. This provides three weeks before the date navigators need to be registered. However, the department provided notice of the commissioner's adoption of these rules on the department's website on January 21, 2014. Nothing prevents a navigator from submitting an application for registration prior to the effective date of the rule, so navigators have an additional 20 days to prepare for compliance with the registration requirement before the effective date. In addition, the adopted rules do not require that navigators complete and provide proof of the department-certified training required by the adopted rules until May 1, 2014. Completing the necessary 20 hours of state-specific training will be the most time-consuming element of the registration process, but under adopted §19.4008(g) navigators do not need to complete or provide proof of completion of this training until May 1, which is 30 days after the end of the open enrollment period.

The department believes the need for the consumer protections included in the adopted rule warrants the March 1 applicability date, and that allowing a two-month delay in showing proof of state-specific training provides sufficient time for navigators to register with the department, obtain the required training, and continue to provide assistance to consumers throughout the current open enrollment period.

As adopted, the rules do not require 40 hours of additional state-specific training. Instead, the adopted rules attribute 20 hours of

federal education to the initial training requirement, and require 20 hours of state-specific training, for a total of 40 hours of training, with the specific requirements being contained in adopted §19.4008. The department determined that additional training was necessary based on input received during the department's review of the federal regulations and the rulemaking process. Several navigator entities in Texas have independently decided that federal training requirements are insufficient and either employ individuals with specialized experience to serve as navigators or provide extra training beyond what is required by the federal government. To ensure the qualification of all navigators in Texas, the department incorporated requirements for additional training into the adopted rules.

The department does not agree that the proposed rules are unnecessary or overly burdensome. The department determined that additional requirements were necessary based on a thorough review of standards in federal regulations, as required by SB 1795; input from stakeholders in Texas; and conferences with HHS staff. Notably, several navigator entities in Texas have independently decided that federal requirements are insufficient. They perform their own background checks, employ individuals with specialized experience to serve as navigators, and provide extra training beyond what is required by the federal regulations. To ensure consistent and uniform qualification of all navigators in Texas and meet the minimum standards established in Insurance Code §4154.051(c), the department has incorporated standards for additional vetting and training into the adopted rules. While some entities have made credible voluntary efforts in training and other matters, it is still necessary that basic standards be implemented by rule to ensure that all navigators in the state have adequate training to ensure the protection of Texas citizens and consumers.

The adopted rules reduce the cost of compliance for navigators. In response to this comment and similar comments, expressing concerns regarding the registration fee, the department agrees to withdraw the proposed section that would establish registration and renewal fees and not include it in the adopted rule.

Cost estimates in the rule proposal for navigator training vary between \$200 and \$800 dollars because the estimates were based on a cost range of \$5 to \$20 dollars per hour for 40 hours of state-specific training. In response to concerns in this and other similar comments about training costs and the amount of training required, the department has revised this requirement in the adopted rules from what the department proposed. As adopted, the rules only require 20 hours of state-specific training, which reduces the potential cost range for training to \$100 to \$400 dollars.

In addition, navigator entities that choose to develop their own training courses and have them certified by the department can reduce their cost more. Under 28 TAC Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Education Programs, and Certification Courses), the cost to become an approved course provider is \$50, and there is no cost associated with the certification of a preregistration course except for the cost to develop the materials. Based on this, a navigator entity's cost to provide initial training for individual navigators employed by or associated with it could be as low as \$50 plus the cost of training materials and supplies, regardless of the number of individual navigators employed by or associated with the navigator entity.

Comment: A commenter submitted written comments in support of the rules. The commenter expressed concern about the po-

tential of navigators with a criminal background and the potential misuse of private information that navigators could access in the course of enrolling people. The commenter expressed dissatisfaction with the federal navigator regulations. The commenter expressed appall that federal regulations do not provide for background checks or proof of financial responsibility.

Agency Response: The department appreciates the supportive comment. The department notes that the rules as adopted require fingerprinting and a background check, as required by other department licensing regulations. The department also notes the navigator entity financial responsibility requirements in adopted §19.4010.

Comment: A commenter submitted written comments that said the definitions of "individual navigator" and "navigator services" were too broad. The commenter said defining an individual navigator as "an individual performing navigator services" would create uncertainty in the application and interplay of proposed §19.4003 and §19.4004. The commenter said the proposed definitions of "individual navigator" and "navigator services" could lead to unintended consequences for neighbors, elected officials, friends, family members, etc., as individuals required to register with the department as "individual navigators" and comply with all other requirements under Chapter 19 Subchapter W.

The commenter requested the department to more explicitly limit the definition and application of registration requirements to only navigators who are federally certified by the exchange to avoid inadvertently criminalizing friends and neighbors trying to help one another.

The commenter contended that the 40 hours of training required under proposed §19.4009, in addition to the 20 to 30 hours required for federal training requirements, seems arbitrary and cumbersome. The commenter agreed that navigators should understand Texas Medicaid but stated that a minimum of 13 hours of training for Texas-specific Medicaid seems excessive when compared to comparable training required under the Texas Health and Human Services Commission's Community Partners Program and Health Insurance Counseling and Advocacy Program.

The commenter suggested that the department require a number of training hours comparable to other programs. The commenter alternatively suggested mastery of specific content and objectives instead of arbitrary hours. Instead of a navigator entity spending up to \$20 an hour for training and burdening the department with approving this new training, the commenter requested the use of existing training modules already approved by the State on Texas Medicaid, HIPAA, and other relevant subject matter to fulfill navigator training requirements.

The commenter requested that the department establish a process for a navigator entity and individual navigators to demonstrate that they have already satisfied requirements under the proposed subchapter so that both do not have to complete the process. The commenter stated that the United Way of Tarrant County already does sufficient background checks on all employees, including those hired specifically as navigators. For this reason, the commenter requested that the department work with that entity in fulfilling the background check requirements.

The commenter stated that it was difficult to see how the proposed requirements could be met by the proposed March deadline. The commenter requested that the department consider a more reasonable deadline, as well as consider implementing

a mechanism for an individual to continue to provide navigator services, if their certification process has not been completed due to a delay outside of their control, for example, a backlog in processing, and as long as that individual has met all of their obligations to obtain certification.

Agency Response: As proposed, the terms "individual navigator" and "navigator entity" were based on the statutory definition of "navigator" in Insurance Code §4154.002(3), which defines "navigator" as "an individual or entity performing the activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." Rather than using the words "activities and duties of a navigator" in the definitions for "individual navigator" and "navigator entity," the department used the defined term "navigator services." The defined term "navigator services" was intended to capture "activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." However, some commenters did not understand that Insurance Code §4154.002(3) defines the term "navigator" by referencing the "activities and duties of a navigator," and use of the department term intended to capture that phrase resulted in further confusion.

To avoid confusion regarding the statutory basis for the definition of "individual navigator" and "navigator entity," the department has revised the definitions of the terms to remove the defined term "navigator services" and incorporate the statutory phrase "activities and duties of a navigator." In addition, the department has revised the definitions of these terms to include a citation to the specific subsection in 42 USC §18031 that sets out the duties of a navigator.

To ensure clarity regarding the statutory basis for the term "navigator services," the department has revised that term to use the statutory phrase "activities and duties of a navigator." The department also removed a reference to the adopted rules because all activities and duties described in them are based on statutory activities and duties; added a citation to the specific subsection in 42 USC §18031 that sets out duties of a navigator; added a citation to Insurance Code §4154.051(a), which is the source of the duties listed in the definition; and revised the list of duties in the definition to include only those most relevant to the need for regulation of navigators.

The department does not intend to regulate use of the term "navigator" beyond its use associated with the health benefit exchange, and the applicability provision included the proposed rule would prevent application to anyone not required to comply with the rules.

The department declines to limit the definition and applicability of registration requirements to only navigators who are federally certified.

The department agrees that the proposed rules would apply to more than just recipients of federal grants under the ACA. This applicability is consistent with the definition for "navigator" contained in SB 1795, which says, "navigator means an individual or entity performing the activities and duties of a navigator as described by 42 USC §18031." Application of the rules consistent with the SB 1795 definition of "navigator" means the adopted registration process will apply to those who want to perform the activities and duties of a navigator as described by 42 USC §18031, but who did not apply for, or applied for but did not receive, a federal navigator grant. One such organization has contacted the department several times since passage of the ACA, asking how it could receive authorization to act as a navigator.

The availability of more than just grant-recipient navigators in Texas will broaden the pool of navigators able to help Texans find and apply for health coverage under the exchange, which is consistent with the purpose of SB 1795 as stated in Insurance Code Chapter 4154: "[T]he purpose of this chapter is to provide a state solution to ensure that Texans are able to find and apply for affordable health coverage under any federally run health benefit exchange, while helping consumers in this state." The department determined that the availability of more navigators in Texas would increase the likelihood that members of the uninsured population in this state would have assistance in finding healthcare through the exchange.

Application of the rules consistent with the SB 1795 definition of "navigator" also means that the standards adopted under the rules will apply equally to grant recipient and non-grant recipient navigators. For example, navigators with the organization that has contacted the department will need to have the same amount of education and training as navigators with any of the federal grant recipients in Texas. This will create a level playing field for all navigators in the state, and will help ensure that consumers receive enrollment assistance in a health benefit exchange from a qualified navigator.

As adopted, the rules do not require 40 hours of additional state-specific training. Instead, the adopted rules attribute 20 hours of federal education to the initial training requirement, and require 20 hours of state-specific training, for a total of 40 hours of training, with the specific requirements being contained in adopted §19.4008.

The department determined that additional training was necessary based on input received during the department's review of the federal regulations and the rulemaking process. Several navigator entities in Texas have independently decided that federal training requirements are insufficient and either employ individuals with specialized experience to serve as navigators or provide extra training beyond what is required by the federal government. To ensure the qualification of all navigators in Texas, the department incorporated requirements for additional training into the adopted rules.

Cost estimates in the rule proposal for navigator training vary between \$200 and \$800 dollars because the estimates were based on a cost range of \$5 to \$20 dollars per hour for 40 hours of state-specific training. In response to concerns in this and other similar comments about training costs and the amount of training required, the department has revised this requirement in the adopted rules from what the department proposed. As adopted, the rules only require 20 hours of state-specific training, which reduces the potential cost range for training to \$100 to \$400 dollars.

In addition, navigator entities that choose to develop their own training courses and have them certified by the department can reduce their cost more. Under 28 TAC Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Education Programs, and Certification Courses), the cost to become an approved course provider is \$50, and there is no cost associated with the certification of a preregistration course except for the cost to develop the materials. Based on this, a navigator entity's cost to provide initial training for individual navigators employed by or associated with it could be as low as \$50 plus the cost of training materials and supplies, regardless of the number of individual navigators employed by or associated with the navigator entity.

The department declines to make a change in the background check requirements. For consistency in the application of department rules, an individual navigator and a navigator entity, as defined by §19.4002, would need to comply with new Subchapter W, 28 TAC §§19.4001 - 19.4017, including the application for registration under §19.4006.

The department does not intend to regulate use of the term "navigator" beyond its use associated with the health benefit exchange, and the applicability provision included the proposed rule would prevent application to anyone not required to comply with the rules.

However, several commenters have expressed concern regarding limits on use of the term "navigator." In order to clarify the intent of the provision, the department has revised the adopted text addressing use of the term "navigator" to clarify that the section only applies to entities and individuals subject to the rules as provided for in §19.4003 (relating to Applicability). The department has done this by inserting a reference to §19.4003, which specifies those to whom the adopted rules apply. In addition, the department has revised the specific provision addressing use of the term "navigator" to prohibit "use of the term 'navigator' in a deceptive manner as part of an entity's name or website address or in an individual's title."

Comment: A commenter submitted both written and verbal comments, which expressed areas of concern in relation to the proposed requirements. The commenter expressed concerns that the term "navigator service" was vague and overly broad in that it would prohibit anyone not registered with TDI from providing outreach, education and information on health insurance or the federal exchange.

The commenter expressed concerns that the proposed rule would have a negative impact on efforts to insure Texans and suggested hospitals and providers licensed under Title 4, Subtitle B of the Health and Safety Code should be exempted from the rule.

In addition, the commenter expressed concern that the term "navigator services" is vague and overly broad in that §19.4004 will require registration and regulation of any individual or entity that provides any of the navigator services enumerated in §19.4002(4) and consequently prevent hospital employees from providing insurance education.

The commenter expressed concern that the term "enrollment assistance" would include assisting Texans completing an application for Medicaid, CHIP or Marketplace subsidies.

Agency Response: The department does not agree that the proposed rules will have a negative impact on efforts to insure Texans or prevent hospital employees from providing insurance education. Insurance Code Chapter 4154 requires the department to develop standards and qualifications for entities and individuals performing the activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section, following the commissioner's finding of insufficiencies in federal regulations and attempts to resolve those insufficiencies through work with the HHS in accord with Insurance Code §4154.051(b). In the adopted rules, the department balances the needs of consumers with the burden of regulation on navigators in its preparation of the standards required by Insurance Code §4154.051(b).

The department determined that, while there is a broad range of activities and duties a navigator as defined by SB 1795 may

perform, it is the act of assisting consumers with enrollment into the health benefit exchange that present the most potential for consumer risk due to the navigator either being unqualified or acting with malicious intent. So the department has focused the standards adopted under the rules on entities and individuals performing that activity, adopting only minimal standards for entities and individuals performing other activities and duties of a navigator as described by 42 USC §18031 and the regulations enacted under it. To implement the standards in this way, the department developed the term "enrollment activities in a health benefit exchange."

The department does not agree that the proposed definition of "enrollment assistance in a health benefit exchange" would extend to enrollment assistance for Medicaid and CHIP and will impact community-based assistance for and perhaps enrollment in those programs. However, based on the confusion voiced in this and similar comments regarding applicability of the term as proposed, the department has adopted a revised definition.

The department adopts a revised definition for the term "enrollment assistance in a health benefit exchange" by replacing the phrase "completing the application for health coverage affordability programs" with the words "applying for or enrolling in health coverage affordability programs."

The purpose of this change is to clarify that definition contemplates assistance in the specific act of applying for health coverage affordability programs available through a health benefit exchange, not merely assistance in completing an application form when the form is used for reasons other than plying for health coverage in the exchange. To further clarify this definition, the department has also incorporated in the definition additional examples of what would constitute providing assistance in the act of applying for health coverage affordability programs available through a health benefit exchange.

As included in the rule proposal, the terms "individual navigator" and "navigator entity" were based on the statutory definition of "navigator" in Insurance Code §4154.002(3), which defines "navigator as "an individual or entity performing the activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section. Rather than using the words "activities and duties of a navigator" in the definitions for "individual navigator" and "navigator entity," the department used the defined term "navigator services." The defined term "navigator services" was intended to capture "activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." However, some commenters did not understand that Insurance Code §4154.002(3) defines the term "navigator" by referencing the activities and duties of a navigator, and use of the department term intended to capture that phrase resulted in further confusion.

To avoid confusion regarding the statutory basis for the definition of "individual navigator" and "navigator entity," the department has revised the definitions of the terms to remove the defined term "navigator services" and incorporate the statutory phrase "activities and duties of a navigator." In addition, the department has revised the definitions of these terms to include a citation to the specific subsection in 42 USC §18031 that sets out the duties of a navigator.

The department agrees with the commenter that the rule as proposed could potentially apply to human resource personnel assisting employees enroll in the Small Business Health Options Program. The department does not believe it is necessary for

the department to regulate such an act, so has revised §19.4003 to include a new subsection (e) that says, "This subchapter does not apply to the human resource personnel of a business using the Small Business Health Options Program marketplace to provide qualified health plans to employees of the business."

The department does not agree with the commenter's assertion that the proposed rule would impact application assistance for Medicaid and CHIP. However, to address the concerns of this commenter and other commenters with similar concerns, the department has adopted a revised definition for the term "enrollment assistance in a health benefit exchange" by replacing the phrase completing the application for health coverage affordability programs" with the words "applying for or enrolling in health coverage affordability programs."

The purpose of this change is to clarify that definition contemplates assistance in the specific act of applying for health coverage affordability programs available through a health benefit exchange, not merely assistance in completing an application form when the form is used for reasons other than applying for health coverage in the exchange. To further clarify this definition, the department has also incorporated in the definition additional examples of what would constitute providing assistance in the act of applying for health coverage affordability programs available through a health benefit exchange.

Comment: One commenter observed that the department has documented insufficiencies in federal navigator standards, rules, and regulations. The commenter expressed strong support for the proposed rule and maintained that navigators must undergo background checks and fingerprinting, just as licensed insurance agents must.

The commenter also said that navigators must be trained on the Texas Medicaid program, enhanced privacy standards, and ethics, and that navigators must be required to register with the State of Texas. The commenter said the proposed rule would accomplish those ends.

The commenter said that the proposed rules should be adopted quickly because navigators are currently working in Texas under lax and ill-defined federal standards. The commenter noted that navigators in Texas have been caught on video engaging in fraud and political activities while only the federal standards were in place. The commenter said this demonstrates the need for more stringent state rules.

The commenter also noted that HHS Secretary Kathleen Sebelius confirmed that under federal rules it was possible for a convicted felon to serve as a navigator.

The commenter thanked the department for completely reviewing the federal navigator standards, rules, and regulations and adhering to the information gathering and rulemaking processes of SB 1795, and the commenter urged expeditious adoption of the proposed rules.

Agency Response: The department agrees with the commenter that there are concerns regarding training and vetting processes for navigators under the federal regulations. The department believes the adopted rules fairly balance consumer protection concerns with concerns about burdens being placed on navigators.

The department believes the adopted rules will provide consumer protection by requiring additional training for navigators in areas where federal training requirements are insufficient and by ensuring that those who are most likely to gain access to non-public information-individual navigators who provide enrollment

assistance in a health benefit exchange-are sufficiently vetted and registered with the department, will provide identifying information to consumers, and are employed by or associated with a navigator entity that can provide oversight.

The department acknowledges the need for expeditious adoption and appreciates the supportive comments.

Comment: A commenter submitted written comments in support of the adoption of these rules, which the commenter believes address significant deficiencies and lack of transparency in the federal navigator program. The commenter said the state's rules would ensure that Texans' most intimate family, health, tax and financial information will be better protected from fraud, identity theft, or the inappropriate release of personal information.

The commenter said that because the federal program requires Texans to aggregate and provide unprecedented amounts of their highly personal and sensitive medical, family, tax, financial and employment information to nongovernmental navigators and their supervising agencies, the rules should address the significant federal deficiencies in navigator training, including a standard operating procedure to be used when sensitive private information is improperly released.

Video evidence that navigators in Dallas County were encouraging applicants to commit tax fraud, and the Obama Administration's refusal to provide access to or publicly disclose contracts with individual parent navigator entities in Texas, make it impossible to understand if and how navigators will be held accountable for fraud, identity theft, and other inappropriate actions in Texas. This is especially problematic because under the federal standards convicted felons can be licensed as navigators. All of this makes it more important that Texas adopt its own standards for training and licensing navigators operating in Texas.

The commenter supported the proposed rule's restrictions on individuals' use of the "navigator" designation before meeting Texas' requirements, among other consumer protections created by the proposed rules. The commenter also supported the rule's restrictions on navigators' electioneering.

The commenter urged the department to require that navigators inform individuals if and how their information has been compromised, and inform appropriate Texas authorities, including this agency.

The commenter suggested the rule also require that navigators receive training and examination on fraud prevention, detection, and reporting.

Agency Response: The department appreciates the commenter's support of the rules. The rules require that a navigator entity, its designated responsible party, and each individual navigator provide a criminal history, and the navigator entity's responsible party and individual's fingerprints, unless the individual is exempt under the Insurance Code.

An individual seeking to be registered as a navigator will be tested on Texas statutes and rules regarding the protection of nonpublic information; on steps to take and authorities to notify if such information is compromised; and on the detection and prevention of fraud, including insurance fraud.

The rule requires that navigators inform individuals if their non-public information has been compromised. In addition, navigator entities and individual navigators are required to comply with the privacy requirements in Insurance Code Chapters 601 and 602, and 28 TAC Chapter 22. A violation of those provisions is

subject to disciplinary and enforcement sanctions and penalties provided in the Insurance Code, Chapters 28A, 82, 83, and 84.

In addition, the rules prohibit navigators from engaging in electioneering or other campaign activities.

Comment: A commenter submitted written comments, expressing concern that the proposed rule will make the effort to provide a mechanism by which small businesses and individuals can enroll in private market health insurance through the health insurance exchange unnecessarily difficult. The commenter stated that the definition of "navigator" was overly broad.

The commenter said the training requirements for navigators are excessive and exceed the federal requirements without adding appreciably more expertise.

The commenter said the registration and training fees were burdensome and would discourage individuals and organizations from providing navigator services.

The commenter said the requirement for providing proof of financial responsibility in the form of a surety bond, professional liability policy, or a deposit in securities is burdensome and onerous.

The commenter expressed that the department's timeline for implementing these rules was ambitious and that the burdensome training and financial requirements would impede actual delivery of navigator services by February and March 2014, which is the enrollment period for Texans.

Agency Response: As proposed, the terms "individual navigator" and "navigator entity" were based on the statutory definition of "navigator" in Insurance Code §4154.002(3), which defines "navigator" as "an individual or entity performing the activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." Rather than using the words "activities and duties of a navigator" in the definitions for "individual navigator" and "navigator entity," the department used the defined term "navigator services." The defined term "navigator services" was intended to capture "activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." However, some commenters did not understand that Insurance Code §4154.002(3) defines the term "navigator" by referencing the "activities and duties of a navigator," and use of the department term intended to capture that phrase resulted in further confusion.

To avoid confusion regarding the statutory basis for the definition of "individual navigator" and "navigator entity," the department has revised the definitions of the terms to remove the defined term "navigator services" and incorporate the statutory phrase "activities and duties of a navigator." In addition, the department has revised the definitions of these terms to include a citation to the specific subsection in 42 USC §18031 that sets out the duties of a navigator.

To ensure clarity regarding the statutory basis for the term "navigator services," the department has revised that term to use the statutory phrase "activities and duties of a navigator." The department also removed a reference to the adopted rules because all activities and duties described in them are based on statutory activities and duties; added a citation to the specific subsection in 42 USC §18031 that sets out duties of a navigator; added a citation to Insurance Code §4154.051(a), which is the source of the duties listed in the definition; and revised the list of duties in the definition to include only those most relevant to the need for regulation of navigators.

The department does not agree that training requirements are excessive. Requiring a certain number of hours of training as a prerequisite to a qualification is consistent with the requirements for navigators in other states. It also reflects the practice of several of the federal navigator grant recipients in Texas that the department spoke with in preparing the proposed rules. Many navigator entities employ individuals with additional training experience or require that those they hire as navigators receive training beyond what is required by the federal regulations. The department believes that the rules as adopted will ensure that navigators are qualified while providing them enough flexibility to choose the course they take to meet the preregistration education requirements.

As adopted, the rules do not require 40 hours of additional state-specific training. Instead, the adopted rules attribute 20 hours of federal education to the initial training requirement, and require 20 hours of state-specific training, for a total of 40 hours of training, with the specific requirements being contained in adopted §19.4008. The department determined that additional training was necessary based on input received during the department's review of the federal regulations and the rulemaking process. Several navigator entities in Texas have independently decided that federal training requirements are insufficient and either employ individuals with specialized experience to serve as navigators or provide extra training beyond what is required by the federal government. To ensure the qualification of all navigators in Texas, the department incorporated requirements for additional training into the adopted rules.

Cost estimates in the rule proposal for navigator training vary between \$200 and \$800 dollars because the estimates were based on a cost range of \$5 to \$20 dollars per hour for 40 hours of state-specific training. In response to concerns in this and other similar comments about training costs and the amount of training required, the department has revised this requirement in the adopted rules from what the department proposed. As adopted, the rules only require 20 hours of state-specific training, which reduces the potential cost range for training to \$100 to \$400 dollars.

In addition, navigator entities that choose to develop their own training courses and have them certified by the department can reduce their cost more. Under 28 TAC Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Education Programs, and Certification Courses), the cost to become an approved course provider is \$50, and there is no cost associated with the certification of a preregistration course except for the cost to develop the materials. Based on this, a navigator entity's cost to provide initial training for individual navigators employed by or associated with it could be as low as \$50 plus the cost of training materials and supplies, regardless of the number of individual navigators employed by or associated with the navigator entity.

In response to this comment and similar comments, expressing concerns regarding the registration fee, the department agrees to withdraw the proposed section that would establish registration and renewal fees and not include it in the adopted rule. The department disagrees that requiring proof of financial responsibility is burdensome and onerous.

The intent of the financial responsibility requirement is to protect individuals against wrongful acts, misrepresentations, errors, omissions, or negligence of the navigator entity, its employees, or navigators associated or employed with the navigator entity. This is a necessary accountability standard for reg-

ulation of navigators that is lacking in federal standards. The department acknowledges that demonstrating compliance with the financial responsibility requirement may result in costs for navigator entities. In response to this and other similar comments regarding the potential cost associated with the requirement, the department has reduced the surety bond amount included in §19.4010(a)(1) to \$25,000, which would reduce the cost of compliance for any navigator entity that selected that option for demonstrating financial responsibility.

The effective date of the rule will be February 10, 2014. This provides three weeks before the date navigators need to be registered. However, the department provided notice of the commissioner's adoption of these rules on the department's website on January 21, 2014. Nothing prevents a navigator from submitting an application for registration prior to the effective date of the rule, so navigators have an additional 20 days to prepare for compliance with the registration requirement before the effective date. In addition, the adopted rules do not require that navigators complete and provide proof of the department-certified training required by the adopted rules until May 1, 2014. Completing the necessary 20 hours of state-specific training will be the most time-consuming element of the registration process, but under adopted §19.4008(g) navigators do not need to complete or provide proof of completion of this training until May 1, which is 30 days after the end of the open enrollment period.

The department believes the need for the consumer protections included in the adopted rule warrants the March 1 applicability date, and that allowing a two-month delay in showing proof of state-specific training provides sufficient time for navigators to register with the department, obtain the required training, and continue to provide assistance to consumers throughout the current open enrollment period.

Comment: A commenter provided a written comment stating that the department has failed to provide justification or rationale for a number of provisions in the rule proposal. The commenter said the definitions of "navigator" and "navigator services" were too broad and that the department was seeking to regulate those who are not navigators.

The commenter also asserted that the rule's applicability was too broad and needed to be narrowed. The commenter said the department should not regulate people as navigators if they are not soliciting their services as such, and that people should be able to help their family complete a Medicaid, CHIP, or exchange application.

The commenter said that the navigator registration and training fees were excessive and would limit the availability of navigator services. The commenter suggested that the department provide free training.

The commenter also said the proposed 40 additional hours of state training was excessive.

The commenter said navigators should have more time to comply with the rule, and requested at least three months to complete the registration process.

Agency Response: As proposed, the terms "individual navigator" and "navigator entity" were based on the statutory definition of "navigator" in Insurance Code §4154.002(3), which defines "navigator" as "an individual or entity performing the activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." Rather than using the words "activities and duties of a navigator" in the definitions for

"individual navigator" and "navigator entity," the department used the defined term "navigator services." The defined term "navigator services" was intended to capture "activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." However, some commenters did not understand that Insurance Code §4154.002(3) defines the term "navigator" by referencing the "activities and duties of a navigator," and use of the department term intended to capture that phrase resulted in further confusion.

To avoid confusion regarding the statutory basis for the definition of "individual navigator" and "navigator entity," the department has revised the definitions of the terms to remove the defined term "navigator services" and incorporate the statutory phrase "activities and duties of a navigator." In addition, the department has revised the definitions of these terms to include a citation to the specific subsection in 42 USC §18031 that sets out the duties of a navigator.

To ensure clarity regarding the statutory basis for the term "navigator services," the department has revised that term to use the statutory phrase "activities and duties of a navigator." The department also removed a reference to the adopted rules because all activities and duties described in them are based on statutory activities and duties; added a citation to the specific subsection in 42 USC §18031 that sets out duties of a navigator; added a citation to Insurance Code §4154.051(a), which is the source of the duties listed in the definition; and revised the list of duties in the definition to include only those most relevant to the need for regulation of navigators.

In adopted §19.4003(f), the department has clarified the rule's applicability to state that it does not apply to "an individual who only provides navigator services to a person or persons related to the individual within the third degree by consanguinity or within the second degree by affinity, as determined under Government Code Chapter 573, Subchapter B."

Applicability of the rules to specific individuals and the need for the department to take action under the rules depends on the facts of the situation. This is the case for anyone regulated by the department, not just navigators. In most instances it may be clear that someone is performing an act regulated by the department, but at other times it may not be apparent if someone is acting as an agent or someone is performing the business of insurance. In those instances, the department must look closely at the facts of the case, and may even need to proceed to a contested case hearing to conclusively determine if an act is regulated by the department.

For example, there may not be a role for the department in the interaction of an individual with the individual's neighbor. If the individual is not purporting to be a navigator and the individual is not taking so many acts that the individual's neighbor believes the individual is a navigator, or is relying on the qualifications of the individual as a navigator, the rules may not be applicable to the individual. However, in other instances someone might deceptively pose as a navigator in an attempt to access a neighbor's private information, or someone may honestly want to act as a navigator to assist neighbors, but not actually understand how to provide such assistance. In those situations, the rules may be applicable and may be necessary to ensure consumer protection.

As adopted, the rules do not require 40 hours of additional state-specific training. Instead, the adopted rules attribute 20 hours of federal education to the initial training requirement, and require

20 hours of state-specific training, for a total of 40 hours of training, with the specific requirements being contained in adopted §19.4008. The department determined that additional training was necessary based on input received during the department's review of the federal regulations and the rulemaking process. Several navigator entities in Texas have independently decided that federal training requirements are insufficient and either employ individuals with specialized experience to serve as navigators or provide extra training beyond what is required by the federal government. To ensure the qualification of all navigators in Texas, the department incorporated requirements for additional training into the adopted rules.

Cost estimates in the rule proposal for navigator training vary between \$200 and \$800 dollars because the estimates were based on a cost range of \$5 to \$20 dollars per hour for 40 hours of state-specific training. In response to concerns in this and other similar comments about training costs and the amount of training required, the department has revised this requirement in the adopted rules from what the department proposed. As adopted, the rules only require 20 hours of state-specific training, which reduces the potential cost range for training to \$100 to \$400 dollars.

In addition, navigator entities that choose to develop their own training courses and have them certified by the department can reduce their cost more. Under 28 TAC Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Education Programs, and Certification Courses), the cost to become an approved course provider is \$50, and there is no cost associated with the certification of a preregistration course except for the cost to develop the materials. Based on this, a navigator entity's cost to provide initial training for individual navigators employed by or associated with it could be as low as \$50 plus the cost of training materials and supplies, regardless of the number of individual navigators employed by or associated with the navigator entity.

In response to this comment and similar comments, expressing concerns regarding the registration fee, the department agrees to withdraw the proposed section that would establish registration and renewal fees and not include it in the adopted rule.

The effective date of the rule will be February 10, 2014. This provides three weeks before the date navigators need to be registered. However, the department provided notice of the commissioner's adoption of these rules on the department's website on January 21, 2014. Nothing prevents a navigator from submitting an application for registration prior to the effective date of the rule, so navigators have an additional 20 days to prepare for compliance with the registration requirement before the effective date. In addition, the adopted rules do not require that navigators complete and provide proof of the department-certified training required by the adopted rules until May 1, 2014. Completing the necessary 20 hours of state-specific training will be the most time-consuming element of the registration process, but under adopted §19.4008(g) navigators do not need to complete or provide proof of completion of this training until May 1, which is 30 days after the end of the open enrollment period.

The department believes the need for the consumer protections included in the adopted rule warrants the March 1 applicability date, and that allowing a two-month delay in showing proof of state-specific training provides sufficient time for navigators to register with the department, obtain the required training, and continue to provide assistance to consumers throughout the current open enrollment period.

Comment: A commenter submitted a written comment suggesting that an exemption for Texas-licensed attorneys be added to the list of exclusions in §19.4003.

Agency Response: The provision of legal services by an attorney for a client, including instances where the attorney provides information to clients, is not considered a "navigator service" under the rules. Therefore, it is not necessary to add licensed attorneys to the list of those excluded in §19.4003.

To ensure clarity regarding the statutory basis for the term "navigator services," the department has revised that term to use the statutory phrase "activities and duties of a navigator." The department also removed a reference to the adopted rules because all activities and duties described in them are based on statutory activities and duties; added a citation to the specific subsection in 42 USC §18031 that sets out duties of a navigator; added a citation to Insurance Code §4154.051(a), which is the source of the duties listed in the definition; and revised the list of duties in the definition to include only those most relevant to the need for regulation of navigators.

Comment: A commenter both spoke at the hearing and submitted written comments expressing concern about the broad scope of the rule's definition of "navigator," and its resulting regulation of a much larger number of individuals providing information than is contemplated under either the federal statute and rules or the state statute. Of specific concern were the definition's application to hospitals and hospital staff who provide information and assistance to patients and families who may be eligible for coverage under Medicaid, CHIP or the federal exchange, unless the hospital has been approved by CMS as a certified application counselor or as a Medicaid eligibility outstation location. Also of concern was an individual merely helping a family member or friend apply for coverage under the federal exchange.

The commenter urged that the application of the rules should be narrowed substantially, and should apply only to those individuals or entities that perform all of the duties required of navigators under federal law.

Agency Response: As proposed, the terms "individual navigator" and "navigator entity" were based on the statutory definition of "navigator" in Insurance Code §4154.002(3), which defines "navigator" as "an individual or entity performing the activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." Rather than using the words "activities and duties of a navigator" in the definitions for "individual navigator" and "navigator entity," the department used the defined term "navigator services." The defined term "navigator services" was intended to capture "activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." However, some commenters did not understand that Insurance Code §4154.002(3) defines the term "navigator" by referencing the "activities and duties of a navigator," and use of the department term intended to capture that phrase resulted in further confusion.

To avoid confusion regarding the statutory basis for the definition of "individual navigator" and "navigator entity," the department has revised the definitions of the terms to remove the defined term "navigator services" and incorporate the statutory phrase "activities and duties of a navigator." In addition, the department has revised the definitions of these terms to include a citation to the specific subsection in 42 USC §18031 that sets out the duties of a navigator.

To ensure clarity regarding the statutory basis for the term "navigator services," the department has revised that term to use the statutory phrase "activities and duties of a navigator." The department also removed a reference to the adopted rules because all activities and duties described in them are based on statutory activities and duties; added a citation to the specific subsection in 42 USC §18031 that sets out duties of a navigator; added a citation to Insurance Code §4154.051(a), which is the source of the duties listed in the definition; and revised the list of duties in the definition to include only those most relevant to the need for regulation of navigators.

Comment: A commenter submitted a written comment to the proposed rule. The commenter stated that additional state requirements on navigators during the open enrollment period would be detrimental to enrollment efforts and would negatively impact the many individuals seeking assistance enrolling in quality, affordable health insurance.

The commenter stated that the department has not provided adequate explanation regarding the impact on the public if navigators and navigator entities are held to more onerous standards than others assisting with similar programs. Under the existing federal regulations, navigators must receive 20 hours of training and go through a certification process, and the department proposes an additional 40 hours of training. The commenter stated that adding substantial hours and fees to the navigators' registration process serves as an impediment to Texas consumers seeking assistance to sign up for health insurance while providing those consumers no meaningful new rights or protections.

The commenter said the terms "navigator" and "navigator services" are broadly defined in the rules. The commenter stated the rules will require any person or entity providing a "navigator service" to register with the department, and for individual navigators, not only must they register with the state, but they must also prove affiliation with a "registered navigator entity." The commenter states that these requirements are broad and that the term "navigator" is not a new term and has been used to describe health care professionals.

The commenter expressed concern that the broad definition of "navigator services" means that anyone helping a family member or friend sign up for insurance would be subject to these rules and its potential penalties.

The commenter stated that the registration requirement for navigators is duplicative because if the state is going to require that a navigator be affiliated with a navigator entity receiving a grant, then it is unnecessary to also require registration with the state. Further, the entity awarding the grant, as well as CMS, already collects information about these organizations and their employed navigators.

The commenter stated that the result of these rules would be to restrict access to health insurance.

The commenter expressed concern that the rules would not only overburden consumers seeking navigator assistance, but would be discriminatory because the regulations only involve plans bought through the marketplace.

The commenter stated that the privacy provisions in the rule were not necessary because HHS encourages navigators to have consumers enter in their own information during the online application to limit access to personal data. Further, once a person has submitted a health insurance application, the navigator loses access to any information. Because signing up for health

insurance is new for many, holding navigators accountable has always been an important part of the process. Federal and state laws already protect consumers' sensitive information, with civil monetary penalties up to \$25,000 for violators.

The commenter said the financial responsibility provisions in the rules were not necessary because organizations employing navigators are already subject to fiduciary rules and regulations, and the proposed rules aim to restrict how, when, and where navigators could assist people, along with adding onerous financial requirements.

The commenter said the rules narrow how navigators provide assistance and were unnecessary because navigators are not selling insurance, nor are they instructing consumers on which plan to pick. Navigators help consumers understand how to pick a plan.

The commenter thought that the rule requiring a navigator's employer execute a \$50,000 surety bond, or obtain a \$100,000 professional liability policy is unnecessary because surety bonds are used in instances when a product is being sold, but navigators are not brokers and do not sell insurance.

Agency Response: The department disagrees with the commenter. The purpose of the proposed rules is to provide a state solution to help and protect Texas consumers by ensuring the security of their private information and ensuring that they are able to find and apply for affordable health coverage under the federal health benefit exchange with the assistance of qualified navigators. The department determined that additional requirements were necessary based on a thorough review of standards in federal regulations, as required by SB 1795; input from stakeholders in Texas; and conferences with HHS staff. Notably, several navigator entities in Texas have independently decided that federal requirements are insufficient. They perform their own background checks, employ individuals with specialized experience to serve as navigators, and provide extra training beyond what is required by the federal regulations. To ensure consistent and uniform qualification of all navigators in Texas and meet the minimum standards established in Insurance Code §4154.051(c), the department has incorporated standards for additional vetting and training into the adopted rules.

The effective date of the rule will be February 10, 2014. This provides three weeks before the date navigators need to be registered. However, the department provided notice of the commissioner's adoption of these rules on the department's website on January 21, 2014. Nothing prevents a navigator from submitting an application for registration prior to the effective date of the rule, so navigators have an additional 20 days to prepare for compliance with the registration requirement before the effective date. In addition, the adopted rules do not require that navigators complete and provide proof of the department-certified training required by the adopted rules until May 1, 2014. Completing the necessary 20 hours of state-specific training will be the most time-consuming element of the registration process, but under adopted §19.4008(g) navigators do not need to complete or provide proof of completion of this training until May 1, which is 30 days after the end of the open enrollment period.

The department believes the need for the consumer protections included in the adopted rule warrants the March 1 applicability date, and that allowing a two-month delay in showing proof of state-specific training provides sufficient time for navigators to register with the department, obtain the required training, and

continue to provide assistance to consumers throughout the current open enrollment period.

As adopted, the rules do not require 40 hours of additional state-specific training. Instead, the adopted rules attribute 20 hours of federal education to the initial training requirement, and require 20 hours of state-specific training, for a total of 40 hours of training, with the specific requirements being contained in adopted §19.4008. The department determined that additional training was necessary based on input received during the department's review of the federal regulations and the rulemaking process. Several navigator entities in Texas have independently decided that federal training requirements are insufficient and either employ individuals with specialized experience to serve as navigators or provide extra training beyond what is required by the federal government. To ensure the qualification of all navigators in Texas, the department incorporated requirements for additional training into the adopted rules.

Cost estimates in the rule proposal for navigator training vary between \$200 and \$800 dollars because the estimates were based on a cost range of \$5 to \$20 dollars per hour for 40 hours of state-specific training. In response to concerns in this and other similar comments about training costs and the amount of training required, the department has revised this requirement in the adopted rules from what the department proposed. As adopted, the rules only require 20 hours of state-specific training, which reduces the potential cost range for training to \$100 to \$400 dollars.

In addition, navigator entities that choose to develop their own training courses and have them certified by the department can reduce their cost more. Under 28 TAC Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Education Programs, and Certification Courses), the cost to become an approved course provider is \$50, and there is no cost associated with the certification of a preregistration course except for the cost to develop the materials. Based on this, a navigator entity's cost to provide initial training for individual navigators employed by or associated with it could be as low as \$50 plus the cost of training materials and supplies, regardless of the number of individual navigators employed by or associated with the navigator entity.

In response to this comment and similar comments, expressing concerns regarding the registration fee, the department agrees to withdraw the proposed section that would establish registration and renewal fees and not include it in the adopted rule.

As proposed, the terms "individual navigator" and "navigator entity" were based on the statutory definition of "navigator" in Insurance Code §4154.002(3), which defines "navigator" as "an individual or entity performing the activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." Rather than using the words "activities and duties of a navigator" in the definitions for "individual navigator" and "navigator entity," the department used the defined term "navigator services." The defined term "navigator services" was intended to capture "activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." However, some commenters did not understand that Insurance Code §4154.002(3) defines the term "navigator" by referencing the "activities and duties of a navigator," and use of the department term intended to capture that phrase resulted in further confusion.

To avoid confusion regarding the statutory basis for the definition of "individual navigator" and "navigator entity," the department has revised the definitions of the terms to remove the defined term "navigator services" and incorporate the statutory phrase "activities and duties of a navigator." In addition, the department has revised the definitions of these terms to include a citation to the specific subsection in 42 USC §18031 that sets out the duties of a navigator.

To ensure clarity regarding the statutory basis for the term "navigator services," the department has revised that term to use the statutory phrase "activities and duties of a navigator." The department also removed a reference to the adopted rules because all activities and duties described in them are based on statutory activities and duties; added a citation to the specific subsection in 42 USC §18031 that sets out duties of a navigator; added a citation to Insurance Code §4154.051(a), which is the source of the duties listed in the definition; and revised the list of duties in the definition to include only those most relevant to the need for regulation of navigators.

The department does not intend to regulate use of the term "navigator" beyond its use associated with the health benefit exchange, and the applicability provision included the proposed rule would prevent application to anyone not required to comply with the rules.

However, several commenters have expressed concern regarding limits on use of the term "navigator." In order to clarify the intent of the provision, the department has revised the adopted text addressing use of the term "navigator" to clarify that the section only applies to entities and individuals subject to the rules as provided for in §19.4003 (relating to Applicability). The department has done this by inserting a reference to §19.4003, which specifies those to whom the adopted rules apply. In addition, the department has revised the specific provision addressing use of the term "navigator" to prohibit "use of the term 'navigator' in a deceptive manner as part of an entity's name or website address or in an individual's title."

SB 1795 specifies minimum standards that must be included in the navigator rules the commissioner adopts. It also requires the commissioner to obtain from the exchange a list of all navigators providing assistance in Texas and, with respect to an individual, the name of the individual's employer or organization. The bill also allows the commissioner to establish, by rule, a state registration for navigators sufficient to ensure that the minimum standards in SB 1795 are satisfied and the information is collected. The registration requirement complies with SB 1795.

The standards set by federal navigator regulations under 42 USC §18031 do not establish privacy requirements. Privacy requirements may exist in contracts HHS has with navigators, but the standards are not available for the public to review and may change year-to-year without notice to the public. Section 19.4012 is necessary to address this insufficiency and requires that navigators in Texas comply with the privacy requirements under the Insurance Code and department rules. The privacy requirements in the Insurance Code and department rules work in conjunction with federal privacy requirements to ensure the safety of consumers' nonpublic information.

The standards set by federal navigator regulations under 42 USC §18031 do not address liability of or penalties applicable to navigators who cause harm to consumers. Section 19.4010 addresses this insufficiency by requiring that a navigator entity operating in Texas secure and maintain evidence of financial re-

sponsibility. The department acknowledges that demonstrating compliance with the financial responsibility requirement may result in costs for navigator entities. In response to this and other similar comments regarding the potential cost associated with the requirement, the department has reduced the surety bond amount included in §19.4010(a)(1) to \$25,000, which would reduce the cost of compliance for any navigator entity that selected that option for demonstrating financial responsibility.

Section 19.4010 requires that a navigator entity operating in Texas secure and maintain evidence of financial responsibility. Financial responsibility may include a surety bond or a professional liability policy. The surety bond protects the consumer against any failure to meet an obligation or wrongdoing by the navigator entity or its employees. The financial responsibility provisions are necessary to protect consumers from wrongful acts, misrepresentations, errors, omissions, or negligence of the navigator entity, employees of the navigator entity, or navigators associated with or employed by the navigator entity. Further, §19.4016 provide for administrative action against entities or individuals who violate Insurance Code Chapter 4154 or department rules.

Comment: A commenter provided both written and oral testimony in the hearing to the effect that the definitions of "navigator" and "navigator services" in §19.4002 were vague and may ensnare people who are acting in good faith to help a neighbor, family member or a friend understand the ACA and the exchange.

The commenter suggested that the comment period on the proposed rules and the timeframe for compliance be extended, perhaps to the next insurance enrollment period. The commenter claimed that costs to navigators would be nearly \$1,000 a person (\$800 for training), which would have a negative impact. The commenter complained that proof of financial responsibility would be costly as well. The commenter noted that many organizations providing navigator services are grant funded and would have trouble adjusting their grants.

The commenter contended that the proposed 40 additional hours of training were excessive and that state training could be provided free of charge. The commenter stated that background checks and reasonable measures to protect consumers' personal information are acceptable, but that the proposed rules would create barriers for navigators by burying them in regulations and requirements, hindering their ability to do their jobs, and making it harder for Texans without health insurance to obtain coverage.

The commenter stated that some forms of evidence of financial responsibility in the rules are not sufficiently clear and need further investigation.

Agency Response: The department disagrees with the commenter's assertions that the rules are overly burdensome, would create a barrier to navigators, and that the evidence of financial responsibility provided for are insufficient or unclear. The department determined that additional requirements were necessary based on a thorough review of standards in federal regulations, as required by SB 1795; input from stakeholders in Texas; and conferences with HHS staff. Notably, several navigator entities in Texas have independently decided that federal requirements are insufficient. They perform their own background checks, employ individuals with specialized experience to serve as navigators, and provide extra training beyond what is required by the federal regulations. To ensure consistent and uniform qualification

of all navigators in Texas and meet the minimum standards established in Insurance Code §4154.051(c), the department has incorporated standards for additional vetting and training into the adopted rules.

The department agrees, however, that criminal background checks and other requirements are necessary and has provided for these in the rules as adopted.

As proposed, the terms "individual navigator" and "navigator entity" were based on the statutory definition of "navigator" in Insurance Code §4154.002(3), which defines "navigator" as "an individual or entity performing the activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." Rather than using the words "activities and duties of a navigator" in the definitions for "individual navigator" and "navigator entity," the department used the defined term "navigator services." The defined term "navigator services" was intended to capture "activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." However, some commenters did not understand that Insurance Code §4154.002(3) defines the term "navigator" by referencing the "activities and duties of a navigator," and use of the department term intended to capture that phrase resulted in further confusion.

To avoid confusion regarding the statutory basis for the definition of "individual navigator" and "navigator entity," the department has revised the definitions of the terms to remove the defined term "navigator services" and incorporate the statutory phrase "activities and duties of a navigator." In addition, the department has revised the definitions of these terms to include a citation to the specific subsection in 42 USC §18031 that sets out the duties of a navigator.

The effective date of the rule will be February 10, 2014. This provides three weeks before the date navigators need to be registered. However, the department provided notice of the commissioner's adoption of these rules on the department's website on January 21, 2014. Nothing prevents a navigator from submitting an application for registration prior to the effective date of the rule, so navigators have an additional 20 days to prepare for compliance with the registration requirement before the effective date. In addition, the adopted rules do not require that navigators complete and provide proof of the department-certified training required by the adopted rules until May 1, 2014. Completing the necessary 20 hours of state-specific training will be the most time-consuming element of the registration process, but under adopted §19.4008(g) navigators do not need to complete or provide proof of completion of this training until May 1, which is 30 days after the end of the open enrollment period.

The department believes the need for the consumer protections included in the adopted rule warrants the March 1 applicability date, and that allowing a two-month delay in showing proof of state-specific training provides sufficient time for navigators to register with the department, obtain the required training, and continue to provide assistance to consumers throughout the current open enrollment period.

As adopted, the rules do not require 40 hours of additional state-specific training. Instead, the adopted rules attribute 20 hours of federal education to the initial training requirement, and require 20 hours of state-specific training, for a total of 40 hours of training, with the specific requirements being contained in adopted §19.4008. The department determined that additional training was necessary based on input received during the department's

review of the federal regulations and the rulemaking process. Several navigator entities in Texas have independently decided that federal training requirements are insufficient and either employ individuals with specialized experience to serve as navigators or provide extra training beyond what is required by the federal government. To ensure the qualification of all navigators in Texas, the department incorporated requirements for additional training into the adopted rules.

Cost estimates in the rule proposal for navigator training vary between \$200 and \$800 dollars because the estimates were based on a cost range of \$5 to \$20 dollars per hour for 40 hours of state-specific training. In response to concerns in this and other similar comments about training costs and the amount of training required, the department has revised this requirement in the adopted rules from what the department proposed. As adopted, the rules only require 20 hours of state-specific training, which reduces the potential cost range for training to \$100 to \$400 dollars.

In addition, navigator entities that choose to develop their own training courses and have them certified by the department can reduce their cost more. Under 28 TAC Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Education Programs, and Certification Courses), the cost to become an approved course provider is \$50, and there is no cost associated with the certification of a preregistration course except for the cost to develop the materials. Based on this, a navigator entity's cost to provide initial training for individual navigators employed by or associated with it could be as low as \$50 plus the cost of training materials and supplies, regardless of the number of individual navigators employed by or associated with the navigator entity.

In response to this comment and similar comments, expressing concerns regarding the registration fee, the department agrees to withdraw the proposed section that would establish registration and renewal fees and not include it in the adopted rule. The department acknowledges that demonstrating compliance with the financial responsibility requirement may result in costs for navigator entities. In response to this and other similar comments regarding the potential cost associated with the requirement, the department has reduced the surety bond amount included in §19.4010(a)(1) to \$25,000, which would reduce the cost of compliance for any navigator entity that selected that option for demonstrating financial responsibility.

Comment: One commenter noted that federal training for navigators is insufficient in that it does not include material specific to the Texas Medicaid program, nor does it include training on ethics. The commenter noted that federal rules and regulations do not require navigators to undergo fingerprinting or a background check to ensure that navigators have not committed a felony. The commenter noted that the federal government is not checking with other federal regulatory agencies about disciplinary actions or revocation of license against would-be navigators. The commenter noted stories about that navigators giving consumers incorrect information about the enrollment process and going so far as to encourage consumers to commit tax fraud by underreporting income in order to qualify for health insurance subsidies. The commenter suggested that it appears as though HHS has not fully cooperated with the department, for instance by refusing to share with the department a navigator contract, a contract template, or even the portion of a contract addressing navigator privacy standards. The commenter stated that state

navigator rules are of the utmost importance and should be enacted as soon as possible.

Agency Response: The department generally agrees with the commenter and appreciates the commenter's support for the proposed rules. The department agrees that federal privacy standards are opaque and appear insufficient. The department shares many of the commenter's concerns about the insufficiency of the federal training and regulations for navigators. The department believes the rules as adopted will provide consumer protection by ensuring that navigators in Texas are sufficiently vetted and trained, and by establishing prohibitions that will help prevent potential fraud and abuse. The department determined that additional requirements were necessary based on a thorough review of standards in federal regulations, as required by SB 1795; input from stakeholders in Texas; and conferences with HHS staff. Notably, several navigator entities in Texas have independently decided that federal requirements are insufficient.

Comment: A commenter who spoke at the public hearing on December 20, 2013, discussed the Legislature's intent that SB 1795 provide the department with the authority and ability to protect Texas consumers from dishonesty by navigators if federal standards were insufficient. The commenter was concerned that federally-trained navigators were poorly trained and could be felons, and that some have been caught encouraging individuals to commit tax fraud.

The commenter recognized that Texas law does not permit felons to be navigators, but believed additional navigator training was still necessary because insurance is such a complicated subject and it was important that navigators be trained to protect individuals' personal, financial and health information.

The commenter expressed hope that, unlike the federal navigator program, the Texas program would permit individuals to confirm that a navigator is certified.

The commenter was also concerned that federal taxpayer money may be used by navigators who are political operatives exploiting the system for political gain by performing electioneering and campaign activities.

The commenter said the state should do everything possible to protect Texans from fraud and incompetence.

Agency Response: The department appreciates the commenter's support for the rules.

An individual seeking to be registered as a navigator will be tested on Texas statutes and rules on protection of nonpublic information; on steps to take and authorities to notify if such information is compromised; and on the detection and prevention of fraud, including insurance fraud. In addition, in response to this and similar comments the rule text as adopted has been revised to require a minimum of two hours of training on basic insurance terminology and how insurance works in the state-specific initial training.

Navigator entities and individual navigators are subject the privacy requirements of Insurance Code Chapters 601 and 602, and 28 TAC Chapter 22. These are the privacy requirements that are generally applicable to anyone who is issued an authorization or license by the department.

In addition, consistent with Insurance Code §4154.101(a)(6) the rules prohibit navigators from engaging in electioneering activities.

Comment: One commenter organization, a subrecipient of a federal navigator grant, provided hearing testimony against the additional requirements for registration, training, background checks and fingerprinting required by the proposed rules. The commenter stated that it was already subject to federal training requirements and maintained that there is no need to re-create this training material and establish a whole new set of course providers. The commenter stated that counselors who have already completed such training should not be required to take the additional proposed training for navigators and that recreating this training would be an additional cost to taxpayers.

The commenter expressed the belief that if the only people who can be navigators are those attached to an organization receiving a navigator grant then there would be no need for those organizations or individuals to incur the additional time and expense of registering with the state. The commenter stated that navigators are not selling insurance and should not have to register like insurance agents. The commenter stated that fingerprinting is not necessary and provides an undue administrative and financial burden on both the employee and the employer. The commenter argued that employer-conducted criminal background checks provide sufficient information to determine if a candidate is appropriate for employment and that it had no additional funding for fingerprinting costs.

With regard to §19.4014 in the rules as proposed, the commenter contended that navigators should be allowed to provide advice regarding substantive benefits or comparative benefits of different plans, since that kind of educational assistance is different than encouraging the client to select one insurance plan over another. The commenter stated the foregoing advice would help the client gain as much knowledge as possible to make an educated decision regarding coverage.

Agency Response: The department disagrees that registration, training, background checks, and fingerprinting are not necessary for navigators, and concludes that the foregoing requirements, including fingerprinting and background checks, form an important part of protecting consumers in this instance. The department determined that additional requirements were necessary based on a thorough review of standards in federal regulations, as required by SB 1795, input from stakeholders in Texas, and conferences with HHS staff. Notably, several navigator entities in Texas have independently decided that federal requirements are insufficient. They perform their own background checks, employ individuals with specialized experience to serve as navigators, and provide extra training beyond what is required by the federal regulations. To ensure consistent and uniform qualification of all navigators in Texas and meet the minimum standards established in Insurance Code §4154.051(c), the department has incorporated standards for additional vetting and training into the adopted rules.

The department declines to make a change in the background check requirements. For consistency in the application of department rules, an individual navigator and a navigator entity, as defined by §19.4002, would need to comply with new Subchapter W, 28 TAC §§19.4001 - 19.4017, including the application for registration under §19.4006.

The commenter appears to be addressing proposed §19.4014(a)(5) when expressing concern that the proposed rule would prevent a navigator from helping a consumer understand and compare benefits to make an informed insurance choice. As proposed, §19.4014(a)(5) would prohibit a navigator from "provid[ing] advice regarding substantive benefits or

comparative benefits of different health benefit plans." The intent of this provision was not to prevent navigators from discussing the coverage available under plans, but rather to prohibit navigators from making blanket statements regarding which plan is more beneficial. The choice of which plan is better should be made by the consumer, not the navigator. This prohibition is based on Insurance Code §4154.101(a)(4), which prohibits a navigator who is not licensed under Insurance Code Chapter 4054 (relating to Life, Accident, and Health Insurance Agents), from offering advice or advising consumers on which qualified health plan available through a health benefit exchange is preferable.

However, based on this comment and statements made by other commenters, it is apparent that proposed §19.4014(a)(5) needs to be revised for clarity. In the rule as adopted, the department revised the provision to track the language of Insurance Code §4154.101(a)(4). In addition, the adopted text follows this revised provision with a subsection that tracks Insurance Code §4154.101(b), which says a navigator is not prohibited under Insurance Code §4154.101 from "providing information and services consistent with the mission of a navigator."

While the department appreciates that some entities have made credible voluntary efforts in training and other matters, it still believes that basic standards need to be implemented by rule to ensure the protection of Texas citizens.

As adopted, the rules do not require 40 hours of additional state-specific training. Instead, the adopted rules attribute 20 hours of federal education to the initial training requirement, and require 20 hours of state-specific training, for a total of 40 hours of training, with the specific requirements being contained in adopted §19.4008. The department determined that additional training was necessary based on input received during the department's review of the federal regulations and the rulemaking process. Several navigator entities in Texas have independently decided that federal training requirements are insufficient and either employ individuals with specialized experience to serve as navigators or provide extra training beyond what is required by the federal government. To ensure the qualification of all navigators in Texas, the department incorporated requirements for additional training into the adopted rules.

Comment: A commenter testified that the majority of navigators are well qualified and the department should not put barriers against them at the eleventh hour.

Agency Response: The department appreciates the commenter's confidence in navigators, but the department does not believe that the federal regulations alone are sufficient. The department determined that additional requirements were necessary based on a thorough review of standards in federal regulations, as required by SB 1795; input from stakeholders in Texas; and conferences with HHS staff. Notably, several navigator entities in Texas have independently decided that federal requirements are insufficient. They perform their own background checks, employ individuals with specialized experience to serve as navigators, and provide extra training beyond what is required by the federal regulations. To ensure consistent and uniform qualification of all navigators in Texas and meet the minimum standards established in Insurance Code §4154.051(c), the department has incorporated standards for additional vetting and training into the adopted rules.

Comment: A commenter testified at the public hearing for the proposed rule on December 20, 2013. The commenter was con-

cerned that the proposed rules would stop navigators from being able to guide the Hispanic and African American communities in obtaining needed health insurance coverage. The commenter described family members who died because they did not have insurance and could not go to a doctor. The commenter stated that not everyone has the Internet or is paid like those present at the stakeholder hearing. The commenter asks for help for "people like us that need this and [need] to understand that we have options."

Agency Response: The department agrees that consideration of those in need of understanding and obtaining health coverage is important. The department believes consistent and uniform standards are necessary to ensure the qualification of all navigators in Texas so that those described by the commenter can get the guidance they need from a qualified navigator.

The commenter appears to address proposed §19.4014(a)(5) when expressing concern that the proposed rule would prevent a navigator from helping a consumer understand and compare benefits to make an informed insurance choice. As proposed, §19.4014(a)(5) would prohibit a navigator from "provid[ing] advice regarding substantive benefits or comparative benefits of different health benefit plans." The intent of this provision was not to prevent navigators from discussing the coverage available under plans, but rather to prohibit navigators from making blanket statements regarding which plan is more beneficial. The choice of which plan is better should be made by the consumer, not the navigator. This prohibition is based on Insurance Code §4154.101(a)(4), which prohibits a navigator who is not licensed under Insurance Code Chapter 4054 (relating to Life, Accident, and Health Insurance Agents), from offering advice or advising consumers on which qualified health plan available through a health benefit exchange is preferable.

However, based on this comment and statements made by other commenters, it is apparent that proposed §19.4014(a)(5) needs to be revised for clarity. In the rule as adopted, the department revised the provision to track the language of Insurance Code §4154.101(a)(4). In addition, the adopted text follows this revised provision with a subsection that tracks Insurance Code §4154.101(b), which says a navigator is not prohibited under Insurance Code §4154.101 from "providing information and services consistent with the mission of a navigator."

Comment: A commenter stated that its organization was not a navigator, but reaches Texans in homes and community and civic centers, and provides them with the tools they need to make the best decisions for their families' healthcare needs, including connecting them to navigators or enrollment assisters. The commenter noted that insurance is a complicated and difficult process, so navigator organizations are so important to successfully getting health coverage for Texans.

The commenter stated that the proposed additional rules, fees, and regulations would be a contradiction to a state that prides itself in less government and less interference. The commenter expressed the belief that navigators are already under strict federal guidelines and undergo a training regimen before getting certified and that additional state rules and regulations are needless and burdensome.

Agency Response: The department does not agree that state regulation of healthcare navigators is unnecessary. The department does not believe that the federal regulations alone are sufficient. The department determined that additional requirements were necessary based on a thorough review of standards in fed-

eral regulations, as required by SB 1795; input from stakeholders in Texas; and conferences with HHS staff. Notably, several navigator entities in Texas have independently decided that federal requirements are insufficient. They perform their own background checks, employ individuals with specialized experience to serve as navigators, and provide extra training beyond what is required by the federal regulations. To ensure consistent and uniform qualification of all navigators in Texas and meet the minimum standards established in Insurance Code §4154.051(c), the department has incorporated standards for additional vetting and training into the adopted rules.

Comment: A commenter testified that navigators should be educated to help consumers through the process of application for health insurance in the federal marketplace and be required to protect the private and financial records of consumers, so thorough background checks are especially important.

The commenter stated that in addition to adequate initial training, navigators should be required to continuously update their knowledge of the ACA and the marketplace delivery system and meet appropriate privacy standards because consumers deserve to be guided by an educated, financially responsible, registered navigator during this enrollment process.

Agency Response: The department generally agrees with the commenter. Requiring a certain number of hours of training as a prerequisite to a qualification is consistent with the requirements for navigators in other states. It also reflects the practice of several of the federal navigator grant recipients in Texas that the department spoke with in preparing the proposed rules. Many navigator entities employ individuals with additional training experience or require that those they hire as navigators receive training beyond what is required by the federal regulations. The department believes that the rules as adopted will ensure that navigators are qualified while providing them enough flexibility to choose the course they take to meet the preregistration education requirements.

The department appreciates the commenter's support of continuing education requirements and background checks.

Comment: The commenter recommends that the rules be reviewed by the Medical Care Advisory Committee which is a federally mandated committee that advises the Medicaid program in Texas.

The commenter expressed that the privacy provisions in this rule are duplicative of provisions concerning privacy in Chapter 181 of the Texas Health and Safety Code. The commenter stated that the department should not implement privacy provisions in this rule because there are already rules in place that protect health information.

The commenter stated that the definition of navigator is broad and ambiguous, and it may impose potential restrictions on nonexempt hospital staff, doctors, and front-line associates.

Agency Response: The department declines to have the Medical Care Advisory Committee review the proposed rules. These adopted rules are not applicable to the Texas Medicaid program.

The department does not agree that §19.4012 is duplicative of Chapter 181 of the Texas Health and Safety Code. Section 19.4012 requires a navigator entity or individual to comply with Insurance Code Chapters 601 (concerning Privacy), and 602 (concerning Privacy of Health Information), and 28 TAC Chapter 22 (concerning Privacy). These are the statutes and rules ap-

plicable to anyone operating with an authorization issued by the department.

The privacy requirements in the Insurance Code and department rules work in conjunction with the Texas Health and Safety Code and federal privacy requirements to ensure the safety of consumers' nonpublic information.

As proposed, the terms "individual navigator" and "navigator entity" were based on the statutory definition of "navigator" in Insurance Code §4154.002(3), which defines "navigator" as "an individual or entity performing the activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." Rather than using the words "activities and duties of a navigator" in the definitions for "individual navigator" and "navigator entity," the department used the defined term "navigator services." The defined term "navigator services" was intended to capture "activities and duties of a navigator as described by 42 USC §18031 or any regulation enacted under that section." However, some commenters did not understand that Insurance Code §4154.002(3) defines the term "navigator" by referencing the "activities and duties of a navigator," and use of the department term intended to capture that phrase resulted in further confusion.

To avoid confusion regarding the statutory basis for the definition of "individual navigator" and "navigator entity," the department has revised the definitions of the terms to remove the defined term "navigator services" and incorporate the statutory phrase "activities and duties of a navigator." In addition, the department has revised the definitions of these terms to include a citation to the specific subsection in 42 USC §18031 that sets out the duties of a navigator.

To ensure clarity regarding the statutory basis for the term "navigator services," the department revised that term to use the statutory phrase "activities and duties of a navigator." The department also removed a reference to the adopted rules because all activities and duties described in them are based on statutory activities and duties; added a citation to the specific subsection in 42 USC §18031 that sets out duties of a navigator; added a citation to Insurance Code §4154.051(a), which is the source of the duties listed in the definition; and revised the list of duties in the definition to include only those most relevant to the need for regulation of navigators.

Comment: A commenter testified in favor of the rules and complained of federal privacy protections, especially since so many of the federal requirements are contained in undisclosed contracts. The commenter noted that the federal regulations do not provide guidance to navigators associated with consumers disclosing unreported income and do not mandate administrative action against navigators that violate state and federal law.

The commenter noted that there are indications that navigators at multiple locations were encouraging consumers to lie about income when applying for tax subsidies, and cited Secretary Sebelius' testimony that it is possible for a convicted felon to work as a navigator.

The commenter suggested that navigators be required to become volunteer deputy registrars to ensure that registered navigators and those working for navigator organizations in Texas are not improperly engaging in electioneering activities or otherwise supporting the candidacy of an individual for government positions and be subject to all applicable qualifications and restrictions set forth by the Office of the Secretary of State, Elections Division.

Agency Response: The department appreciates the commenter's support for the rules, and agrees that press reports about privacy and other violations by navigators are cause for concern. The department does not believe that the federal regulations alone are sufficient. The department determined that additional requirements were necessary based on a thorough review of standards in federal regulations, as required by SB 1795; input from stakeholders in Texas; and conferences with HHS staff. Notably, several navigator entities in Texas have independently decided that federal requirements are insufficient. They perform their own background checks, employ individuals with specialized experience to serve as navigators, and provide extra training beyond what is required by the federal regulations. To ensure consistent and uniform qualification of all navigators in Texas and meet the minimum standards established in Insurance Code §4154.051(c), the department has incorporated standards for additional vetting and training into the adopted rules.

The department agrees that the federal regulations do not satisfy the minimum requirements included in §4154.051(c) which necessitate the adoption of rules by the department. The department declines to make the voter registrar modification suggested by the commenter. Requiring navigators to be registered as volunteer deputy registrars goes beyond the commissioner's authority established in Insurance Code Chapter 4154.

Comment: A commenter expressed the belief that the hours of training required by the proposed rule are overly burdensome and costly (up to \$800 per navigator) and will take effect shortly before the close of the open enrollment period on March 31.

The commenter asked that the amount of required training be lowered. The commenter recommended that the amount of required training for healthcare navigators be reduced. The commenter complained that the department had not provided the basis for the training requirements or required hours to his satisfaction and there was no apparent basis for the training requirements in the rules.

The commenter asked that the department revise the rules to require only the hours of training justified by a specific curriculum.

Agency Response: Requiring a certain number of hours of training as a prerequisite to a qualification is consistent with the requirements for navigators in other states. It also reflects the practice of several of the federal navigator grant recipients in Texas that the department spoke with in preparing the proposed rules. Many navigator entities employ individuals with additional training experience or require that those they hire as navigators receive training beyond what is required by the federal regulations. The department believes that the rules as adopted will ensure that navigators are qualified while providing them enough flexibility to choose the courses they take to meet the preregistration education requirements.

As adopted, the rules do not require 40 hours of additional state-specific training. Instead, the adopted rules attribute 20 hours of federal education to the initial training requirement, and require 20 hours of state-specific training, for a total of 40 hours of training, with the specific requirements being contained in adopted §19.4008. The department determined that additional training was necessary based on input received during the department's review of the federal regulations and the rulemaking process. Several navigator entities in Texas have independently decided that federal training requirements are insufficient and either seek out individuals with specialized experience to serve as navigators.

tors or provide extra training beyond what is required by the federal government. To ensure the qualification of all navigators in Texas, the department incorporated requirements for additional training into the adopted rules.

Cost estimates in the rule proposal for navigator training vary between \$200 and \$800 dollars because the estimates were based on a cost range of \$5 to \$20 dollars per hour for 40 hours of state-specific training. In response to concerns in this and other similar comments about training costs and the amount of training required, the department has revised this requirement in the adopted rules from what the department proposed. As adopted, the rules only require 20 hours of state-specific training, which reduces the potential cost range for training to \$100 to \$400 dollars.

In addition, navigator entities that choose to develop their own training courses and have them certified by the department can reduce their cost more. Under 28 TAC Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Education Programs, and Certification Courses), the cost to become an approved course provider is \$50, and there is no cost associated with the certification of a preregistration course except for the cost to develop the materials. Based on this, a navigator entity's cost to provide initial training for individual navigators employed by or associated with it could be as low as \$50 plus the cost of training materials and supplies, regardless of the number of individual navigators employed by or associated with the navigator entity.

The effective date of the rule will be February 10, 2014. This provides three weeks before the date navigators need to be registered. However, the department provided notice of the commissioner's adoption of these rules on the department's website on January 21, 2014. Nothing prevents a navigator from submitting an application for registration prior to the effective date of the rule, so navigators have an additional 20 days to prepare for compliance with the registration requirement before the effective date. In addition, the adopted rules do not require that navigators complete and provide proof of the department-certified training required by the adopted rules until May 1, 2014. Completing the necessary 20 hours of state-specific training will be the most time-consuming element of the registration process, but under adopted §19.4008(g) navigators do not need to complete or provide proof of completion of this training until May 1, which is 30 days after the end of the open enrollment period.

The department believes the need for the consumer protections included in the adopted rule warrants the March 1 applicability date, and that allowing a two-month delay in showing proof of state-specific training provides sufficient time for navigators to register with the department, obtain the required training, and continue to provide assistance to consumers throughout the current open enrollment period.

Comment: A commenter testified that the he hopes navigators can help people get the insurance they need and the rules will not prevent navigator services from being offered because the people in his district badly need it.

Agency Response: The purpose of this rulemaking is to implement Senate Bill 1795, which was intended to provide a state solution to help and protect Texas consumers by ensuring the security of their private information, and ensuring that they are able to find and apply for affordable health coverage through the federal health benefit exchange with the assistance of qualified navigators.

Comment: A commenter provided hearing testimony and suggested that the department suspend all rules, other than federal rules, in order to allow sufficient time for enrollment of senior citizens. The commenter was concerned that the rules would prevent rapid implementation of the healthcare insurance exchange for senior citizens and health insurance coverage for that segment of the population.

Agency Response: The department declines to withdraw the rule proposal. The department does not believe that the federal regulations alone are sufficient. The department determined that additional requirements were necessary based on a thorough review of standards in federal regulations, as required by SB 1795; input from stakeholders in Texas; and conferences with HHS staff. Notably, several navigator entities in Texas have independently decided that federal requirements are insufficient. They perform their own background checks, employ individuals with specialized experience to serve as navigators, and provide extra training beyond what is required by the federal regulations. To ensure consistent and uniform qualification of all navigators in Texas and meet the minimum standards established in Insurance Code §4154.051(c), the department has incorporated standards for additional vetting and training into the adopted rules.

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The department believes the need for the consumer protections included in the adopted rule warrants the March 1 applicability date, and that allowing a two-month delay in showing proof of state-specific training provides sufficient time for navigators to register with the department and continue to provide assistance to consumers throughout the current open enrollment period.

Comment: A commenter testified at the January 6 public hearing for the proposed rule. The commenter said the commenter's organization and others like it had completed necessary training to make advice available to consumers to help them make informed decisions.

The commenter said current processes would work fine with or without changes in the rules.

The commenter did not support additional fees. The commenter said 30 hours of federal training was more than enough for those in the commenter's organization to learn the rules and assist those in need, and expressed hope that the deadline for any additional training would not be March 31, 2014.

The commenter said there is a program in place that appears to be working, though perhaps it could work better with a tweak or two, if rule changes were not overbearing.

Agency Response: The department does not agree that the current processes would work fine without the adopted rules. The department believes consistent and uniform standards are necessary to ensure the qualification of all navigators in Texas.

The department does not believe that the federal regulations alone are sufficient. The department determined that additional requirements were necessary based on a thorough review of standards in federal regulations, as required by SB 1795; input from stakeholders in Texas; and conferences with HHS staff. Notably, several navigator entities in Texas have independently decided that federal requirements are insufficient. They perform their own background checks, employ individuals with specialized experience to serve as navigators, and provide extra training beyond what is required by the federal regulations. To ensure consistent and uniform qualification of all navigators in Texas and meet the minimum standards established in Insurance Code §4154.051(c), the department has incorporated standards for additional vetting and training into the adopted rules.

As adopted, the rules do not require 40 hours of additional state-specific training. Instead, the adopted rules attribute 20 hours of federal education to the initial training requirement, and require 20 hours of state-specific training, for a total of 40 hours of training, with the specific requirements being contained in adopted §19.4008. The department determined that additional training was necessary based on input received during the department's review of the federal regulations and the rulemaking process. Several navigator entities in Texas have independently decided that federal training requirements are insufficient and either employ individuals with specialized experience to serve as navigators or provide extra training beyond what is required by the federal government. To ensure the qualification of all navigators in Texas, the department incorporated requirements for additional training into the adopted rules.

Cost estimates in the rule proposal for navigator training vary between \$200 and \$800 dollars because the estimates were based on a cost range of \$5 to \$20 dollars per hour for 40 hours of state-specific training. In response to concerns in this and other similar comments about training costs and the amount of training required, the department revised this requirement in the adopted rules from what the department proposed. As adopted, the rules only require 20 hours of state-specific training, which reduces the potential cost range for training to \$100 to \$400 dollars.

In addition, navigator entities that choose to develop their own training courses and have them certified by the department can reduce their cost more. Under 28 TAC Chapter 19, Subchapter K (relating to Continuing Education, Adjuster Prelicensing Education Programs, and Certification Courses), the cost to become an approved course provider is \$50, and there is no cost associated with the certification of a preregistration course except for the cost to develop the materials. Based on this, a navigator entity's cost to provide initial training for individual navigators employed by or associated with it could be as low as \$50 plus the cost of training materials and supplies, regardless of the number of individual navigators employed by or associated with the navigator entity.

In response to this comment and similar comments, expressing concerns regarding the registration fee, the department agrees to withdraw the proposed section that would establish registration and renewal fees and not include it in the adopted rule.

Also, in response to this comment and similar comments, the department has revised the text of the adopted rules to clarify

that a registrant does not need to complete or provide proof of completion of the department-certified training required by the adopted rules until May 1, 2014. This means that registrants will not need to complete additional training by a March 1, 2014, deadline.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For: One state senator; three state representatives; Texas Office of the Attorney General; Office of the Lieutenant Governor; Independent Insurance Agents of Texas; Texas House Republican Caucus; and Texas Conservative Coalition.

For with changes: Two state senators; five state representatives; National Multiple Sclerosis Society; Texas Association of Health Underwriters; National Academy of Elder Law Attorneys; Texas Public Policy Foundation; Texas Hospital Association; Texas Senate Democratic Caucus; Christus Health; Livestrong Foundation; Texas Impact; Center for Public Policy Priorities; Lesbian Health Initiative of Houston; MHP, Inc.; Seton Healthcare Family; City of Houston Department of Health and Human Services; Teaching Hospitals of Texas; and Health Insurance Navigators of Texas.

Against: Two state senators; nine state representatives; thirteen individuals representing themselves; Travis County Commissioner's Court; the Dallas County Judge; United Way of Tarrant County; Community Council of Greater Dallas; Texans Care for Children; Bexar Area Agency on Aging; Insure-a-kid; United Way of El Paso/Enroll El Paso; Texas Organizing Project; and Houston Area Urban League, Inc.

STATUTORY AUTHORITY. The sections are adopted under Insurance Code §§82.002(c), 82.003, 83.003, 84.004(a) and (c), 201.054(b), 541.401(a), 541.452, 601.051(a) and (b), 601.052, 602.004, 4001.005, 4001.103(b), 4004.103(a), (b), and (c), 4005.109 (a), (b), and (c), 4052.051, 4154.001, 4154.005, 4154.051(a) and (b), 4154.054, and 36.001; Family Code §231.302(c); Government Code §411.087 and §411.106; Human Resources Code §80.001(a) and (b); Occupations Code Chapter 53 and §53.021; 15 USC §6801(b), 15 USC §6805(b)(2); and 15 USC §6805(c).

Section 82.002(c) provides that the commissioner's authority under Chapter 82 applies to each form of authorization and each person or entity holding an authorization.

Section 82.003 provides that the commissioner's authority under Chapter 82 is in addition to any other authority to enforce a sanction, penalty, fine, forfeiture, denial, suspension, or revocation otherwise authorized by law.

Section 83.003 provides that the commissioner may adopt reasonable rules to implement this chapter, including rules that provide, to the extent possible, uniformity of procedures between this state and other states, the United States, or the National Association of Insurance Commissioners.

Section 84.004(a) provides that the commissioner may adopt and enforce reasonable rules that the commissioner determines necessary to accomplish the purposes of this chapter.

Section 84.004(c) provides that the existence or absence of a rule adopted under this chapter does not limit the commissioner's authority to take any action authorized by law.

Section 201.054(b) requires the department to maintain a record of the federal identification number of each entity subject to regulation under the Insurance Code or another insurance law of

this state and to include the appropriate number in any communication to or information shared with the comptroller relating to that entity.

Section 541.401(a) provides that the commissioner may adopt reasonable rules the commissioner determines necessary to accomplish the purposes of Chapter 541.

Section 541.452 provides that the powers vested in the department and the commissioner by Chapter 541 are in addition to any other powers to enforce a penalty, fine, or forfeiture authorized by law with respect to a method of competition or act or practice defined as unfair or deceptive.

Section 601.051(a)(1) and (2) provides that the commissioner must adopt rules to implement Chapter 601 and any other rules necessary to carry out Subtitle A, Title V, Gramm-Leach-Bliley Act, 15 USC §6801 et seq., as amended, to make this state eligible to override federal regulations as described by 15 USC §6805(c), as amended.

Section 601.051(b) provides that in adopting rules under Chapter 601, the commissioner must attempt to keep state privacy requirements consistent with federal regulations adopted under Subtitle A, Title V, Gramm-Leach-Bliley Act (15 USC §6801 et seq.), as amended.

Section 601.052 provides that the department must implement standards as required by 15 USC §6805(b), as amended.

Section 602.004 provides that the commissioner may adopt rules as necessary to implement this chapter.

Section 4001.005 provides that commissioner may adopt rules necessary to implement Title 13 of the Texas Insurance Code and to meet the minimum requirements of federal law, including regulations.

Section 4001.103(b) provides that the department may deny an application for an authorization if the applicant fails to provide a complete set of fingerprints on request by the department.

Section 4004.103(a) provides that each continuing education program provider must register with the department as a course provider.

Section 4004.103(b) provides that the department must assess a registration fee for each application for registration as a course provider, set by the commissioner in an amount necessary for the proper administration of Chapter 4004.

Section 4004.103(c) provides that the commissioner may adopt rules establishing other requirements for continuing education program providers.

Section 4005.109(a) provides that the commissioner by rule may establish fines for certain violations to expedite the department's processing of violations of the Insurance Code.

Section 4005.109(b) provides that a violation for which a fine may be assessed under this section includes a failure to: obtain the total number of continuing education hours before the renewal date of a license; timely report a change of address to the department; or notify the department of an administrative action against the agent by a financial or insurance regulator of another state or of the federal government.

Section 4005.109(c) provides that §4005.109 does not limit the department's authority to take any other disciplinary action against a license holder as otherwise provided by the Insurance Code.

Section 4052.051 provides that a person may not act as a life and health insurance counselor unless the person holds a license issued by the department under this chapter.

Section 4154.001 provides that the purpose of Insurance Code Chapter 4154 is to provide a state solution to ensure that Texans are able to find and apply for affordable health coverage under any federally-run health benefit exchange, while helping consumers in Texas.

Section 4154.005 provides that the commissioner must adopt minimum rules necessary to implement Insurance Code Chapter 4154 and to meet the minimum requirements of 42 USC §18031, including regulations.

Section 4154.051(a) provides that the commissioner must determine whether the standards and qualifications for navigators provided by 42 USC §18031 and any regulations enacted under that section are sufficient to ensure that navigators can perform their required duties.

Section 4154.051(b) provides that if the commissioner determines the standards are insufficient to ensure that navigators can perform their required duties, the commissioner must make a good faith effort to work in cooperation with HHS and propose improvements to those standards. The section further provides that if, after a reasonable interval, the commissioner determines that the standards remain insufficient, the commissioner by rule must establish standards and qualifications to ensure that navigators in Texas can perform their required duties. The section also states that, at a minimum, the rules the commissioner adopts must provide that a navigator in Texas has not: had a professional license suspended or revoked; been the subject of any other disciplinary action by a financial or insurance regulator of Texas, another state, or the United States; or been convicted of a felony.

Section 4154.054 provides that the commissioner must adopt rules authorizing additional training for navigators as the commissioner considers necessary to ensure compliance with changes in state or federal law.

Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

Family Code §231.302(c) provides that for the purpose of assisting in the administration of laws relating to child support enforcement under Parts A and D of Title IV of the federal Social Security Act, 42 USC §§601 - 617 and §§651 - 669, each licensing authority is required to request, and each applicant for a license is required to provide, the applicant's social security number.

Government Code §411.087 permits the department to obtain criminal history record information maintained by the FBI or from any other criminal justice agency in this state that pertains to a person who is an applicant for a license, permit, certificate of authority, certificate of registration, or other authorization issued by the department.

Government Code §411.106 permits the department to obtain criminal history record information from the Department of Public Safety that relates to a person who is an applicant for a license, permit, certificate of authority, certificate of registration, or other authorization issued by the department.

Human Resources Code §80.001(a) provides that a state law enforcement agency or the law enforcement agency of any po-

litical subdivision of the state must comply with the request of a person to have a record of his fingerprints made.

Human Resources §80.001(b) provides that a law enforcement agency may charge a fee not to exceed \$10 for fingerprinting when requested by a person.

Occupations Code Chapter 53 generally provides the procedures a licensing authority must implement when considering the consequences of a criminal record on granting or continuing a person's license, authorization, certificate, permit, or registration.

Occupations Code §53.021 authorizes a licensing authority to suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of certain criminal offenses.

Title 15 USC §6801(b) provides that, in furtherance of the policy in subsection (a) of §6801, each agency or authority described in §6805(a) must establish appropriate standards for the financial institutions subject to their jurisdiction relating to: administrative, technical, and physical safeguards to ensure the security and confidentiality of customer records and information; protection against any anticipated threats or hazards to the security or integrity of such records; and protection against unauthorized access to or use of such records or information that could result in substantial harm or inconvenience to any customer.

Title 15 USC §6805(b)(2) provides that the agencies and authorities described in paragraphs (3), (4), (5), (6), and (7) of subsection (a) of §6805 are required to implement the standards prescribed under §6801(b) of Title 15 by rule, with respect to the financial institutions and other persons subject to their respective jurisdictions under subsection (a) of §6805.

Title 15 USC §6805(c) provides that if a state insurance agency fails to adopt regulations to carry out this subchapter, that state will not be eligible to override, pursuant to §1831x(g)(2)(B)(iii) of Title 12, the insurance consumer protection regulations prescribed by a federal banking agency under §1831x(a) of Title 12.

§19.4001. Purpose.

The purpose of this subchapter is to implement Texas Insurance Code Chapter 4154, which is intended to provide a state solution to help Texas consumers and ensure that they are able to find and apply for affordable health coverage under the federal health benefit exchange.

§19.4002. Definitions.

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

(1) Enrollment assistance in a health benefit exchange--The provision of assistance to a consumer in applying for or enrolling in health coverage affordability programs available through a health benefit exchange. This includes providing assistance in completing an electronic or paper application or providing assistance in applying for an affordability program available through a health benefit exchange by phone or through email; providing assistance in notifying a health insurance carrier of the consumer's selection of a health benefit plan; or facilitating the consumer's initial premium payment to the health insurance carrier.

(2) Governmental entity--

(A) A board, commission, or department of the state or a political subdivision of the state, including a municipality, a county, or any kind of district; or

(B) An institution of higher education as defined by Education Code §61.003.

(3) Individual navigator--An individual performing the activities and duties of a navigator as described by Insurance Code Chapter 4154, 42 USC §18031(i), or any regulation enacted under 42 USC §18031(i).

(4) Navigator entity--An entity performing or overseeing an individual's performance of the activities and duties of a navigator as described by Insurance Code Chapter 4154, 42 USC §18031(i), or any regulation enacted under 42 USC §18031(i).

(5) Navigator services--Activities and duties of a navigator as described by Insurance Code Chapter 4154, 42 USC §18031(i), or any regulation enacted under 42 USC §18031(i), including the following duties, as listed in Texas Insurance Code §4154.051(a):

(A) assisting consumers in completing the application for health coverage affordability programs available through a health benefit exchange;

(B) explaining how health coverage affordability programs work and interact, including Medicaid, the Children's Health Insurance Program, or advance premium tax credits and cost-sharing assistance; and

(C) explaining health insurance concepts related to qualified health plans, including premiums, cost sharing, networks, or essential health benefits.

(6) Nonpublic information--Information protected under Insurance Code Chapter 601 or 602, and Chapter 22 of this title (relating to Privacy), including nonpublic personal financial information and nonpublic personal health information as those terms are defined under Chapter 22 of this title.

§19.4003. Applicability.

(a) Except as provided by subsections (b) - (f) of this section, this subchapter applies to any individual or entity that provides navigator services in Texas on or after March 1, 2014.

(b) In accord with Insurance Code §4154.004, this subchapter does not apply to:

- (1) a licensed life, accident, and health insurance agent;
- (2) a licensed life and health insurance counselor; or
- (3) a licensed life and health insurance company.

(c) This subchapter does not apply to an individual or entity that provides navigator services under and in compliance with state or federal authority other than 42 USC §18031, to the extent that the individual or entity is providing assistance consistent with that state or federal authority.

(d) This subchapter does not apply to a certified application counselor holding a certification issued under 45 CFR §155.225.

(e) This subchapter does not apply to the human resource personnel of a business using the Small Business Health Options Program Marketplace to provide qualified health plans to employees for the business.

(f) This subchapter does not apply to an individual who only provides navigator services to a person or persons related to the individual within the third degree by consanguinity or within the second degree by affinity, as determined under Government Code Chapter 573, Subchapter B.

§19.4004. Registration Required.

(a) An individual who performs navigator services in Texas may not provide enrollment assistance in a health benefit exchange unless the individual or entity is registered with the department under this subchapter.

(b) An entity that performs or oversees the provision of navigator services in Texas may not provide or facilitate the provision of enrollment assistance in a health benefit exchange unless the entity is registered with the department under this subchapter.

(c) Any employee of a navigator entity who provides enrollment assistance in a health benefit exchange on behalf of the navigator entity in Texas must be registered with the department as an individual navigator under this subchapter.

§19.4005. Registration Eligibility.

(a) Registration as a navigator entity. To register as a navigator entity, an entity must:

- (1) establish procedures for the handling of nonpublic information;
- (2) demonstrate financial responsibility as required under §19.4010 of this title (relating to Financial Responsibility);
- (3) provide to the department the procedures and evidence of financial responsibility required by this subsection;
- (4) designate an officer, manager, or other individual in a leadership position in the entity to act as a responsible party on behalf of the entity and submit to fingerprinting and a background check under Chapter 1, Subchapter D of this title (relating to Effect of Criminal Conduct), to the same extent as that subchapter applies to any other applicant for a license, registration, certification, permit, or authorization under the Insurance Code;
- (5) provide a list of individuals performing navigator services on behalf of or under the supervision of the entity; and
- (6) complete and provide to the department an application for registration under §19.4006 of this title (relating to Application for Registration).

(b) Registration as an individual navigator. To register as an individual navigator an individual must:

- (1) be at least 18 years of age;
- (2) provide proof that the registrant is a citizen of the United States or has complied with all federal laws pertaining to employment or to the transaction of business in the United States;
- (3) provide proof that the individual has complied with the applicable education and examination requirements of §19.4008 of this title (relating to Navigator Education and Examination Requirements);
- (4) submit to fingerprinting and a background check under Chapter 1, Subchapter D of this title, to the same extent as that subchapter applies to any other applicant for a license, registration, certification, permit, or authorization under the Insurance Code;
- (5) identify a registered navigator entity the individual will be employed by or associated with as an individual navigator;
- (6) be an individual eligible for an authorization issued by the department under the guidelines in §1.502 of this title (relating to Licensing Persons with Criminal Backgrounds); and
- (7) complete and provide to the department an application for registration under §19.4006 of this title.

(c) An individual an entity designates as a responsible party under subsection (a) of this section must be an individual eligible for an

authorization issued by the department under the guidelines in §1.502 of this title.

§19.4006. Application for Registration.

(a) An entity or individual must submit an application for registration as a navigator entity or individual navigator on a form specified by the department.

(b) The application for registration as a navigator entity must include:

- (1) the name of the entity;
- (2) the entity's federal employer identification number;
- (3) information regarding the location and means of contacting the entity;
- (4) disclosures regarding regulatory actions, criminal actions, and litigation history;
- (5) the date range for which the entity seeks registration;
- (6) the form of the financial responsibility the entity elects;
- (7) the name and biographical information of a designated responsible party who will be the primary contact for the entity;
- (8) the designated responsible party's:
 - (A) current name and any different names used by the designated responsible party in the past;
 - (B) social security number;
 - (C) date of birth;
 - (D) current mailing address, phone number, and email address;
 - (E) professional background and criminal history information; and
- (9) a complete set of the designated responsible party's fingerprints, using the procedures under §1.509 of this title (relating to Fingerprint Format and Complete Application), unless the individual meets the exemption in §1.504(b)(1) of this title (relating to Fingerprint Requirement).

(c) The application for registration as an individual navigator must include:

- (1) the individual's:
 - (A) name;
 - (B) social security number;
 - (C) mailing address, physical address, and email address;
 - (D) phone number; and
 - (E) professional background and criminal history information;
- (2) the date range for which registration is sought;
- (3) certificates showing completion of applicable initial education or continuing education; and
- (4) a complete set of the individual's fingerprints, using the procedures under §1.509 of this title, unless the individual meets the exemption in §1.504(b)(1) of this title.

§19.4007. Renewal of Registration as a Navigator Entity or Individual Navigator.

(a) A navigator entity or individual navigator registered with the department under this subchapter must submit an application for renewal of registration on a form specified by the department no later than August 31 of each year. The application for renewal of registration must contain the same information required by §19.4006 of this title (relating to Application for Registration).

(b) The registration of a navigator entity or individual navigator under this subchapter will expire the next September 30 following the effective date of the registration or renewal of registration, unless the navigator entity or individual navigator submits an application for renewal under subsection (a) of this section.

§19.4008. Navigator Education and Examination Requirements.

(a) Initial education requirements. To be eligible to register as an individual navigator, an individual must complete training and education consisting of a minimum of 40 hours. The training and education must include:

(1) twenty hours attributed to completion of all training required for navigators under any regulation enacted under 42 USC §18031 with passing scores on all examinations associated with the training requirements; and

(2) twenty hours attributed to completion of a preregistration education course that consists of department-certified training. The preregistration education course must include:

(A) a minimum of five hours on Texas-specific Medicaid and Children's Health Insurance Program provisions;

(B) a minimum of five hours on applicable privacy requirements;

(C) a minimum of five hours on ethics;

(D) a minimum of two hours on basic insurance terminology and how insurance works;

(E) a minimum of two hours of exam preparation; and

(F) one hour allotted for completion of a final examination.

(b) Ongoing education requirements. To be eligible for renewal of registration as an individual navigator, an individual navigator must:

(1) complete all continuing education requirements for navigators under any regulation enacted under 42 USC §18031 and pass all examinations associated with the training requirements; and

(2) complete continuing education courses that consist of a minimum of six hours of department-certified continuing education. The continuing education courses must include:

(A) a minimum of two hours on Texas-specific Medicaid and Children's Health Insurance Program;

(B) a minimum of two hours on applicable privacy requirements; and

(C) a minimum of two hours on ethics.

(c) Education course format. The department-certified education courses under subsections (a)(2) and (b)(2) of this section may consist of classroom courses, classroom equivalent courses, self-study courses, or one-time event courses, in accord with §19.1009 of this title (relating to Types of Courses).

(d) Initial education course final examination requirements. The department-certified education courses under subsection (a)(2) of this section must include a final examination and must provide students

with instruction sufficient to take and pass the final examination, and are not considered complete unless a student receives at least a 70 percent score on the examination.

(1) Final examinations may be written or computer-based, must be designed to test applicants on the materials as specified in this section, and must meet the criteria in subparagraphs (A) - (G) of this paragraph.

(A) A student must complete a 50-question examination in less than 60 minutes over subjects specified in subsection (e) of this section with question percentages specified in subsection (e) of this section.

(B) Examination questions must not be the same or substantially similar to questions a student encounters in the course materials or review examinations, and must not be designed to make the correct answer obvious by its content.

(C) Examination questions must be multiple-choice questions stemming from an inquiry with at least four appropriate potential responses and must not include "all of the above" or "none of the above" as an option.

(D) Specific examination questions must not be made available to a student until the test is administered. Security measures must be in place to maintain the integrity of the examination and ensure the people who take the examination are the students who registered for and attended the course.

(E) Course providers must maintain records of students' examination results for a minimum of four years.

(F) Course providers and instructors may not give any person answers to examination questions at any time before, during, or after a course, except as necessary to allow an authorized staff member to grade the examination.

(G) The instructor, an authorized staff member of the course provider, or a computer program must grade examinations.

(2) A student may be allowed to retake an examination for a department-certified examination course one time without being required to retake the course if the student does not achieve a score of 70 percent or higher on the examination. A retest must consist of an alternate examination consisting of questions that are different from the questions that were on the examination the student has previously taken.

(3) The final examination for an education course must include at least three separate complete examinations that are distributed alternately to students and which are revised or updated consistent with applicable course updates or revisions. An instructor or course provider may distribute only one examination to any one student at the time examinations are conducted.

(4) A disinterested third party must monitor the final examination. During the examination, students may not use course material, personal notes, or any other written or electronic material or media that is not part of the examination, nor engage in communication of any kind with any other person except to receive instructions from the examination monitor. On completion of the examination, the person monitoring the examination must mail or deliver the completed examination directly to the course provider.

(5) Education providers must issue certificates of completion to course participants who successfully pass the examination by correctly answering at least 70 percent of the examination questions. The course provider must:

(A) issue the certificate in a manner that ensures that the person receiving the certificate is the student who took the course;

(B) issue the certificate within 30 days of the student passing the examination; and

(C) complete the certificate to reflect the dates the student took the course and examination.

(6) Course providers must not allow a student, or any person or organization other than the provider giving the course, to prepare, print, or complete a certificate of completion.

(e) Examination topics. The subjects and question percentages required for navigator course examinations are:

(1) eligibility for Texas Medicaid or Children's Health Insurance Program: 14 percent;

(2) enrollment processes for Texas Medicaid or Children's Health Insurance Program: 10 percent;

(3) benefits provided under Texas Medicaid or Children's Health Insurance Program: 8 percent;

(4) Texas statutes and rules pertinent to the protection of nonpublic information: 28 percent;

(5) steps to take and authorities to notify if nonpublic information is compromised: 6 percent;

(6) insurance fraud (Penal Code Chapter 35) and general fraud detection and prevention: 10 percent;

(7) ethical behavior of a navigator: 10 percent;

(8) duty of the navigator to the consumer being assisted: 8 percent; and

(9) the difference between ethics and laws: 6 percent.

(f) Proof of course completion. An individual navigator must maintain proof of completion of education courses for four years from the date of completion of the course. As required by §19.4006 of this title (relating to Application for Registration) or on request by the department, the individual navigator must provide proof of completion of all training and continuing education courses. An individual navigator must immediately report to the department any discrepancy the individual navigator discovers between a course taken by the individual navigator and the credit hours certified to the individual navigator by a course provider.

(g) An individual submitting an application for registration under this section does not need to complete or provide proof of compliance with the training requirements of subsection (a)(2) of this section to the department until May 1, 2014.

§19.4009. Course Providers.

(a) A course provider for navigator initial education or continuing education must comply with:

(1) Sections 19.1005, 19.1007, and 19.1008 of this title (relating to Provider Registration, Instructor, and Speaker Criteria; Course Certification Submission Applications, Course Expirations, and Resubmissions; and Certified Course Advertising, Modification, and Assignment, respectively);

(2) Section 19.1009 of this title (relating to Types of Courses);

(3) Section 19.1010 of this title (relating to Hours of Credit);

(4) Section 19.1011 of this title (relating to Requirements for Successful Completion of Continuing Education Courses);

(5) Section 19.1012 of this title (relating to Forms and Fees); and

(6) Section 19.1014 of this title (relating to Provider Compliance Records).

(b) A course provider that fails to comply with the requirements of this section is subject to:

(1) Section 19.1015 of this title (relating to Failure to Comply); and

(2) Section 19.1016 of this title (relating to Automatic Fines).

§19.4010. Financial Responsibility.

(a) A navigator entity required to register in Texas must secure and maintain evidence of financial responsibility to protect individuals against wrongful acts, misrepresentations, errors, omissions, or negligence of the navigator entity, employees of the navigator entity, or navigators associated with or employed by the navigator entity. Evidence of financial responsibility may be shown by:

(1) obtaining a surety bond in the amount of \$25,000;

(2) obtaining a professional liability policy insuring the navigator entity against errors and omissions in at least the amount of \$100,000, with a deductible of not more than 10 percent of the full amount of the policy;

(3) depositing \$25,000 in securities backed by the full faith and credit of the United States government with the comptroller; or

(4) providing evidence to the department that the navigator entity is a self-insured governmental entity.

(b) A surety bond used to maintain and demonstrate proof of financial responsibility under this section must:

(1) be in the form specified by the department;

(2) be executed by the navigator entity, as principal, and a surety company authorized to do business in this state as a surety;

(3) be payable to the Texas Department of Insurance for the use and benefit of a consumer, conditioned that the navigator entity must pay any final judgment recovered against it by a consumer;

(4) provide that the surety will give no less than 30-days written notice of bond termination to the navigator entity and the department;

(5) be separate from any other financial responsibility obligation; and

(6) not be used to demonstrate professional responsibility for any other license, certification, or person.

(c) A professional liability policy used to maintain and demonstrate proof of financial responsibility under this section must:

(1) be issued by an insurer authorized to engage in the business of insurance in this state; or

(2) if a policy cannot be obtained from an insurer authorized to engage in the business of insurance in this state, be issued by a surplus lines insurer under Insurance Code Chapter 981.

§19.4011. Navigator Identification.

(a) This section applies only to individuals registered with the department under this subchapter.

(b) Before providing or facilitating the provision of enrollment assistance in a health benefit exchange to a consumer, an individual navigator must provide identification to the consumer.

(c) The identification an individual navigator provides to a consumer under this section must include a valid state-issued identification and a notice that identifies the navigator entity the individual navigator is employed by or associated with.

§19.4012. Privacy of Nonpublic Information.

A navigator entity or an individual navigator registered with the department under this subchapter must comply with Insurance Code Chapters 601 and 602, and Chapter 22 of this title (relating to Privacy).

§19.4013. Prohibitions.

(a) In the course of providing navigator services, an entity or an individual may not:

(1) engage in electioneering activities or finance or otherwise support the candidacy of an individual for government positions (including campaigning, persuading, promoting, advertising, or coordinating with any political party, committee, or candidate);

(2) charge consumers for providing information about health coverage affordability programs or health insurance concepts related to qualified health plans;

(3) sell, solicit, or negotiate health insurance coverage;

(4) recommend a specific health benefit plan; or

(5) offer advice or advise consumers on which qualified health plan available through a health benefit exchange is preferable.

(b) Consistent with Texas Insurance Code §4154.101(b), this section does not prohibit a navigator entity or an individual navigator from providing public information on public benefits and health coverage, or other information and services consistent with the mission of a navigator.

§19.4014. Limits on Use of Term "Navigator".

Consistent with §19.4003 of this title (relating to Applicability), unless registered with the department as a navigator entity or an individual navigator under this subchapter, an entity or individual may not:

(1) use the term "navigator" in a deceptive manner as part of an entity's name or website address or in an individual's title; or

(2) imply or represent that the entity or individual is a navigator for a health benefit exchange in advertising or outreach material.

§19.4015. Administrative Violations.

(a) If the commissioner or the commissioner's designee believes that an entity or individual has violated or is violating any provision of Insurance Code Chapter 4154 or this subchapter, the commissioner or the commissioner's designee may compel the production of any and all documents or other information necessary to determine whether such violation has taken place.

(b) The commissioner or commissioner's designee may initiate proceedings under this section.

(c) Proceedings under this section are contested cases for the purpose of Government Code Chapter 2001.

(d) If the commissioner or the commissioner's designee determines that an entity or individual has violated or is violating any provision of Insurance Code Chapter 4154 or this subchapter, the commissioner or the commissioner's designee may:

(1) impose sanctions under Insurance Code Chapter 82;

(2) issue a cease and desist order under Insurance Code Chapter 83;

(3) assess administrative penalties under Insurance Code Chapter 84;

(4) terminate the entity's or individual's registration under this subchapter; or

(5) any combination of these actions.

§19.4016. Severability Clause.

If a court of competent jurisdiction holds that any provision of this subchapter or its application to any person or circumstance is invalid for any reason, the invalidity does not affect other provisions or applications of this subchapter that can be given effect without the invalid provision or application, and to this end the provisions of this subchapter are severable.

§19.4017. Expiration.

In accord with Texas Insurance Code §4154.006, this subchapter expires September 1, 2017.

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

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CHAPTER 21. TRADE PRACTICES
SUBCHAPTER T. SUBMISSION OF CLEAN
CLAIMS

28 TAC §§21.2801 - 21.2809, 21.2811 - 21.2826

The Texas Department of Insurance adopts amendments to 28 TAC §§21.2801 - 21.2809 and §§21.2811 - 21.2826, concerning the elements and the processing of a clean health care claim. The amendments are adopted with changes to the proposed text published in the November 15, 2013, issue of the *Texas Register* (38 TexReg 8105).

REASONED JUSTIFICATION. The National Uniform Claims Committee (NUCC), the National Uniform Billing Committee (NUBC), and the U.S. Department of Health and Human Services Centers for Medicare and Medicaid Services (CMS) have identified much of the information needed to process a health care claim. Texas Insurance Code §1204.102 requires a provider to use one of two forms, the HCFA 1500 or UB-82/HCFA, or their successor forms, for submission of certain claims. The amendments are needed to allow a physician or other provider to begin using CMS-1500 (02/12), the most current successor form to the HCFA 1500; to begin phasing out successor form CMS-1500 (08/05); and to eliminate forms CMS-1500 (12/90) and UB-92 CMS-1450, which are no longer used. The amendments also reflect changes to data elements

captured in the revised information fields in the newest successor form.

House Bill 1772, 82nd Legislature, Regular Session (2011), amended Insurance Code §1301.0041 to add exclusive provider benefit plans to the entities regulated by the chapter. Under 28 TAC §3.3701, a provision that applies to a preferred provider benefit plan also applies to an exclusive provider benefit plan. The rule amendments clarify that these rules apply to an exclusive provider benefit plan carrier unless specifically excepted. For this reason, the term "managed care carrier" (MCC) is substituted for the phrase "HMO or preferred provider carrier" throughout the rule to more easily identify the three types of entities regulated by Subchapter T.

House Bill 2292, 82nd Legislature, Regular Session (2011), amended Insurance Code §843.339 and §1301.104 to provide that a pharmacy claim submitted electronically to a managed care carrier must be paid by electronic funds transfer not later than 18 days after its affirmative adjudication, and a pharmacy claim submitted nonelectronically must be paid not later than 21 days after its affirmative adjudication. The amendments are needed to incorporate those timelines into these rules.

House Bill 2064, 81st Legislature, Regular Session (2009), amended Insurance Code §843.342 and §1301.137 to provide that a portion of certain penalty payments and interest payments that are statutorily paid by managed care carriers for late payment and underpayment of clean claims would be paid to the Texas Health Insurance Pool (Pool). The amendments are needed to incorporate those payments into the rule.

Senate Bill 1367, 83rd Legislature, Regular Session (2013) abolishes the Pool and reallocates payments made to the Pool under the clean claims rules to the department on the Pool's dissolution. The amendments are needed to add that reallocation to the rule.

Throughout the rule nonsubstantive amendments are made to conform the subchapter to the current codification and language of the Insurance and Administrative Codes, to update the rule's internal references, and to make minor language, punctuation, and grammatical changes to conform to the department's style guidelines and make the rules easier to read, understand, and use. These nonsubstantive amendments will be noted in the explanatory text below, but will not be described in detail.

The rule as adopted includes nonsubstantive changes to several of the proposed provisions. The changes do not materially alter issues raised in the proposal, introduce new subject matter, or add costs or requirements to persons other than those previously on notice. Specifically:

* The adopted definition of "MCC or managed care carrier" does not include the phrase "except as prohibited by federal law." §21.2802(17).

* The adopted definition of "preferred provider carrier" does not include the sentence, "The term does not include an insurer that issues an exclusive provider benefit plan." §21.2802(27).

* The department has changed the rule's clause about CMS' transition from the ICD-9-CM to the ICD-10-CM to make clearer how to complete CMS-1500 (02/12) data field 21 throughout that transition. §21.2803(b)(1)(U)(i).

* The department has changed the CMS-1500 (02/12) data field used to indicate a duplicate or corrected claim from field 30 to field 22, moved the provision from subparagraph

§21.2803(b)(1)(HH) to §21.2803(b)(1)(V), and renumbered the intervening subparagraphs.

HOW THE SECTIONS WILL FUNCTION. Adopted amendments to §21.2801 (Purpose and Scope) reflect the recodification of repealed Insurance Code Article 3.70-3C as Chapter 1301 and add exclusive provider carriers to the entities governed by the rules, but exclude from the rule's coverage an exclusive provider benefit plan regulated under Chapter 3, Subchapter KK (Exclusive Provider Benefit Plan) of this title, which provides services under the Texas Children's Health Insurance Program or with the Statewide Rural Healthcare Program.

Adopted amendments to §21.2802 (Definitions) add a definition of "exclusive provider carrier" because Insurance Code Chapter 1301 and these rules now apply to exclusive provider plans as set out in Insurance Code §1301.0041 and §1301.0042. The amendments add a definition of "managed care carrier" (MCC) to be substituted for the phrase "HMO or preferred provider carrier" throughout the balance of the rule to more easily identify the three types of entities now governed by this subchapter (HMO, preferred provider carrier, and exclusive provider carrier). §21.2802(13) and (17). The definition for *source of admission code* has been renamed *Point of Origin for Admission or Visit*, and relocated to conform with the language of the new CMS-1500 (02/12) form. §21.2802(25). The definition of *preferred provider* is amended to reflect that the term includes providers in both preferred provider plans and exclusive provider plans. §21.2802(26). The definitions of *primary plan* and *secondary plan* are amended in anticipation of a successor rule to existing 28 TAC Chapter 3, Subchapter V, §§3.3501 - 3.3511 (Group Coordination of Benefits). §21.2802(28) and (32). The definition of *statutory claims payment period* is amended to include the extended payment periods permitted under §21.2804 (Requests for Additional Information from Treating Preferred Provider) and §21.2819 (Catastrophic Event), and to add the payment periods that apply to electronically and nonelectronically submitted claims for prescription benefits. §21.2802(33).

Several subsections of §21.2803 (Elements of a Clean Claim) have been amended. Adopted amendments to §21.2803(a) (Filing a Clean Claim) make it easier to locate the requirements for submission of nonelectronic dental claims, and electronic claims (including electronic dental claims submitted to an HMO).

Adopted amendments to §21.2803(b) (Required Data Elements) require the use of a successor form for physicians or noninstitutional providers using the CMS-1500 claim form and delete the now-obsolete CMS-1500 (12/90). Also deleted is the UB-92, a now-obsolete version of the UB claim form used by institutional providers. The amendments establish optional timelines to allow for transition to the new forms, establish mandatory use dates, and set out the data elements a physician or provider must use to submit a clean claim on the new successor form CMS-1500 (02/12).

Adopted amendments to §21.2803(b)(1) redesignate former subsection (b)(1) as subsection (b)(2) and add a new subsection (b)(1). New §21.2803(b)(1) requires a physician or noninstitutional provider to use the CMS-1500 (02/12) form for nonelectronic claims filed or refiled on or after April 1, 2014, or the earliest compliance date established by CMS for mandatory use of the CMS-1500 (02/12) form for Medicare claims. New §21.2803(b)(1) also establishes an optional transition period before the new form's mandatory use date. During the transition period, when an MCC notifies a physician or noninstitutional provider that it is prepared to accept claims

filed or refiled on the new form before its mandatory use date, the physician or noninstitutional provider may submit claims using this successor form using the appropriate data elements. New §21.2803(b)(1) lists the data elements that a physician or noninstitutional provider must complete to submit a clean claim on the CMS-1500 (02/12). New §21.2803(b)(1)(A) - (NN) specifies the field location of those data elements.

Adopted amendments to §21.2803(b)(2) delete the text of existing paragraph §21.2803(b)(2) to eliminate all references to obsolete form CMS-1500 (12/90). The amendments also redesignate existing paragraph §21.2803(b)(1) as §21.2803(b)(2) to address the phase-out period for form CMS-1500 (08/05). The amended paragraph specifies that a physician or noninstitutional provider filing or refiling a nonelectronic claim before the later of April 1, 2014, or the earliest compliance date required by CMS must use predecessor form CMS-1500 (08/05). The amendments also allow a physician or noninstitutional provider to begin submitting claims using form CMS-1500 (02/12) when notified that an MCC is prepared to accept claims filed or refiled on the new form.

Adopted amendments to §21.2803(b)(3) eliminate time frames that are no longer relevant because the UB-04 claim form is now the only form institutional providers may use.

Adopted amendments to §21.2803(b)(4) delete the paragraph because the UB-92 claim form is no longer in use.

Adopted amendments to §21.2803(d) (Coordination of Benefits or Nonduplication of Benefits) add the new CMS-1500 (02/12) form, and delete obsolete forms CMS-1500 (12/90) and UB-92. Amendments to this subsection and to §21.2803(f) allow for coordination between these subsections and any successor rule to existing 28 TAC Chapter 3, Subchapter V, §§3.3501 - 3.3511 (Group Coordination of Benefits).

Adopted amendments to §21.2806 (Claims Filing Deadline) include in subsection (c) a method of claim submission listed in §21.2816 that had been omitted, and divides subsection (e) into three paragraphs to reflect that prescription benefit claims are subject to different statutory claims payment periods.

Adopted amendments to §21.2808 (Effect of Filing Deficient Claim) reflect the new statutory time limits that apply to prescription benefit claims.

An adopted amendment to §21.2809 (Audit Procedures) adds subsection (b) (Failure to Provide Notice and Payment), corrects the number of days within which a provider must notify an MCC of underpayment, and corrects the citation to the source of that number.

An adopted amendment to §21.2814 (Electronic Adjudication of Prescription Benefits) deletes from its title and text references to electronic claims because it is now applicable to all claims for prescription benefits.

Adopted amendments to §21.2815 (Failure to Meet the Statutory Claims Payment Period) conform it with Insurance Code §843.342 (Violation of Certain Claims Payment Provisions; Penalties), and §1301.137 (Violation of Claims Payment Requirements; Penalty). These Insurance Code sections were amended in 2009 to establish different penalties and interest for an MCC's late payment and underpayment of clean claims to institutional and noninstitutional providers. The amended rule also reallocates payments made to the Pool under the clean claims rules to the department on the Pool's dissolution.

Adopted amendments to §21.2819 (Catastrophic Event) correct the address to which an MCC must send a notice of a catastrophic event, and correct the titles cited for several sections within the rule.

Adopted amendments to §21.2820 (Identification Cards) add to this section the statutory requirements for exclusive provider plans, which are not identical to those for HMOs and preferred provider plans, and delete subsection (c) because the effective dates in that subsection are now obsolete.

Adopted amendments to §21.2821 (Reporting Requirements) delete the text of obsolete subsection (c), and capture the new statutory timeline for payment of electronic pharmacy claims.

An adopted amendment to §21.2825 (Severability) clarifies the scope of the rules' severability to conform it with current state law.

Adopted amendments to §21.2826 (Waiver) add Insurance Code §1211.001 (Waiver of Certain Provisions for Certain Federal Health Plans) as authority to waive statutory and administrative provisions that do not apply to certain medical assistance plans when provided by an MCC.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

28 TAC §21.2802(17)

Comment: A commenter supports the proposed amendments, but requests that the department change the defined term "MCC or managed care carrier" to "MCO or managed care organization," here and everywhere it appears in the rule, because MCO is the term more commonly used by issuers.

Agency Response: The department declines to make this change. The term "managed care organization" is used elsewhere in the Insurance Code in a manner inconsistent with the rule's definition of "managed care carrier."

Comment: A commenter states appreciation for the department's willingness to seek and consider stakeholder responses concerning the proposed rules. The commenter also states that while they understand the department's desire for a short-hand reference to the three types of carriers subject to Subchapter T for convenience and economy of words, the department could as easily add the term "exclusive provider carrier" wherever necessary throughout the rule rather than create a term combining these carriers.

Agency Response: The department disagrees that the term "managed care carrier" should be removed from the rule and declines to make this change. As defined, the term encompasses all carriers required to comply with the clean claims requirements of Insurance Code Chapters 843 and 1301. The collective term simplifies the rule and makes it more readable and usable by removing repetitive references to the three types of regulated carriers.

Comments: A commenter is concerned that the language except as prohibited under federal law, included in the proposed definition of "MCC or managed care carrier," goes beyond the scope of identifying the three types of entities covered by the subchapter, and introduces another element to the rule. The commenter points out that this added language is not necessary to create one defined term that combines the three types of entity subject to the rule. The commenter suggests that this language, new to the rule, was not deemed necessary before this proposal, and the department has demonstrated no need for the language. The commenter points out that the statute that forms

the basis for the rule's definitions of "HMO," "preferred provider carrier," and "exclusive provider carrier," do not contain this term. The commenter states that the statute with which the department is required to adhere in promulgating this rule does not contain this language. The commenter believes that the language appears to be a substantive addition that: 1) is inconsistent with the underlying statutory language; 2) is not explained in the rule preamble; and 3) is unnecessary to accomplish the purported purpose of the definition, as stated in the rule preamble. The commenter urges that the language is not necessary for any of the stated purposes for the rule proposal (i.e., to implement any of the new legislation referenced in the rule preamble or to conform to any of the claim form changes). The commenter is concerned that the language may significantly increase the burden on providers and the department in enforcing the department's prompt pay rules by effectively requiring proof of an additional element (i.e., that the "as otherwise prohibited under federal law" exception does not apply). The commenter is concerned that the language may create confusion and uncertainty in the application of the prompt pay rules, thereby potentially increasing litigation. The commenter is concerned that the language may create opportunities for issuers to attempt to avoid the application of the prompt pay law in new circumstances, such as the Affordable Care Act's 90 day grace period.

Agency Response: The department agrees that the language in question is not necessary to accomplish the department's goals in amending the rules, and has deleted the proposed language from the final rule.

28 TAC §21.2802(27)

Comment: A commenter urges that the department not adopt the proposed change to §21.2802(27) adding to the definition of "preferred provider carrier" the sentence, "The term does not include an insurer that issues an exclusive provider benefit plan." The commenter asserts that the additional sentence could create a loophole that would exempt carriers that issue both preferred provider benefit plans and exclusive provider benefit plans.

Agency Response: The department has concluded that the proposed additional sentence is unnecessary to the operation of the rule, and has deleted the sentence from the final rule.

28 TAC §21.2803(b)(1)(U)(i)

Comments: A commenter expresses support for the use of the ICD code version as an element of a clean claim, but points out that physicians' and practitioners' use of the ICD-9CM code version will end when CMS and the NUCC make it mandatory to use the ICD-10-CM code version. The commenter suggests that this data element, captured in field 21, be eliminated as an element of a clean claim as of the date CMS and the NUCC make mandatory the use of the ICD-10-CM code version. The commenter suggests that the rule not include a specific date, as CMS and the NUCC may revise their upcoming mandatory use date.

Another commenter points out that identifying the ICD code version used is only important during the transition period between ICD-9-CM and ICD-10-CM, and that it is possible that once the ICD-9-CM is no longer used, CMS and the NUCC may decide to discontinue the use of the ICD indicator captured in field 21. The commenter suggests that if the ICD indicator is discontinued, and the rule continues to require an entry in field 21 for a claim to be clean, the requirement would create a heightened clean claim-specific standard that would be unduly burdensome for providers. The commenter suggests that §21.2803(b)(1)(U)(i) be revised to require only that "if ICD-9-CM is being used, the

provider must identify ICD-9-CM by entering the number '9.'" The commenter states that "providers will be required to use the '9' indicator to designate use of ICD-9-CM for clean claims purposes and may use the '0' indicator to indicate use of ICD-10 (but will not be required to do so for clean claims purposes)." The commenter proposes that "if the indicator field remains blank, the default for processing would be that ICD-10-CM was used. If the field is improperly left blank and the ICD-9-CM was, in fact, used; [sic] then this required element for a clean claim would be missing and the claim will not be 'clean.'"

Agency Response: The department believes that in the transition period between use of the ICD-9-CM and the mandatory use of the ICD-10-CM, providers must identify precisely which ICD code version was used to file a clean claim. The department will continue requiring the entry of the '0' after use of the ICD-10-CM becomes mandatory so that claims *arising before but reported after* the ICD-10-CM's mandatory use date will be properly processed. The department agrees that if CMS no longer requires providers to report the code version, claims arising after the requirement is discontinued need not identify the ICD code version used to be clean claims. Section 21.2803(b)(1)(U)(i) is revised to read as follows:

"(U) for diagnosis codes or nature of illness or injury (CMS-1500 (02/12), field 21), the physician or the provider:

(i) must identify the ICD code version being used:

(I) for claims arising before the date on which CMS mandates the use of the ICD-10-CM code version for claims filed under the Medicare program, by entering either the number "9" to indicate the ICD-9-CM or the number "0" to indicate the ICD-10-CM between the vertical dotted lines in the upper right-hand portion of the field; or

(II) for claims arising on or after the date on which use of the ICD-10-CM becomes mandatory, by entering the number "0" to indicate the ICD-10-CM between the vertical, dotted lines in the upper right-hand portion of the field; or

(III) should CMS no longer require the identification of the ICD code version used, may indicate no ICD code version between the vertical dotted lines in the upper right-hand portion of the field;"

28 TAC §21.2803(b)(1)(HH)

Comment: A commenter notes that while it is not opposed to finding an alternate location for the duplicated or corrected claim designation, it objects to the proposed use of field 30 for this purpose. The commenter notes that the field is specifically reserved for NUCC use, and that NUCC would provide instructions for the field's use. The commenter expresses concern that using field 30 as proposed might jeopardize physicians' ability to meet CMS requirements in the future. As an alternative, the commenter recommends use of field 22 for this purpose, noting that field 22 is conditional and not needed in connection with an original claim submission.

The commenter suggests entering "C" for corrected claim and "D" for duplicate claim in that field.

Agency Response: The department agrees, has changed the reference in this subparagraph from field 30 to field 22, and has reordered the other subparagraphs in §21.2803(b)(1) so that the reference to field 22 appears in proper sequence. The department also agrees that it is appropriate to enter in field 22 a "C"

for a corrected claim and "D" for a duplicate claim, as field 22 is an alphanumeric field.

28 TAC §21.2803(b)(2)

Comment: A commenter supports the provision allowing physicians and noninstitutional providers to begin submitting claims on the CMS-1500 (02/12) when notified that an MCC is prepared to accept claims on the new form, and notes that an MCC may provide such notification through its website, provider newsletter, or other means so providers can easily identify which of the MCCs with which it has contracted are accepting the new form.

Agency Response: The department appreciates the commenter's support on this issue.

Comment: Another commenter states that the proposed rule requires that physicians and noninstitutional providers use predecessor form CMS-1500 (08/05) to file or refile nonelectronic clean claims before the later of April 1, 2014, or the earliest compliance date required by CMS for using successor form CMS-1500 (02/12), and only permits earlier use of the successor form on notification that the MCC is prepared to accept claims filed using the form CMS-1500 (02/12). The commenter urges the department to allow a transitional, dual use period in which a physician or noninstitutional provider could submit a claim on either the CMS-1500 (08/05) or the CMS-1500 (02/12) form before the form's mandatory use date, and before being notified that the MCC is prepared to accept and process clean claims on the new form. The commenter is concerned that early-adopting physicians already using the new form to file Medicare claims would be "unfairly penalized" because they would be required to submit different claim forms to different carriers. The commenter notes that CMS provides a dual use period between January 6, 2014, and April 1, 2014, and urges that the department allow such a dual use period. The commenter is concerned that a physician or provider submitting a claim on the new form before that form's mandatory use date, and before being notified the carrier is ready to accept claims, may have its claim treated as not a clean claim.

Agency Response: The department declines to make this change. Not all carriers doing business in Texas participate in the Medicare program; to require a non-Medicare carrier to accept claims on the new form before its mandatory use date would unfairly penalize those carriers. A carrier that is not ready to process claims submitted on the new form before its mandatory use date may be unable to pay claims timely under the rule; to find those carriers in violation of the prompt pay deadlines would also be unfair. In 2007 the department used this same transitional structure in adopting existing §21.2803(b), implementing the CMS-1500 (08/05). To summarize, if a provider files a claim on the CMS-1500 (02/12) form before its mandatory use date and before the MCC has notified the provider that the MCC is prepared to accept a claim filed on the new form, the claim is not a clean claim. This is true even if the carrier accepts and processes the claim.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For with changes: Texas Association of Health Plans; Texas Medical Association.

STATUTORY AUTHORITY. The amendments are adopted under Insurance Code §§843.336, 1301.131, 1204.102, and 36.001. Sections 843.336(b) and 1301.131(a) provide that nonelectronic claims by physicians and noninstitutional

providers are clean claims if the claims are submitted using form CMS-1500 or, if adopted by the commissioner by rule, a successor to that form developed by the NUCC or its successor. Section 843.336(c) and §1301.131(b) further provide that a non-electronic claim by an institutional provider is a clean claim if the claim is submitted using form UB-92 CMS-1450 or, if adopted by the commissioner by rule, a successor to that form developed by the NUBC. Section 843.336(d) and §1301.131(c) authorize the commissioner to adopt rules that specify the information that must be entered into the appropriate fields on the applicable claim form for a claim to be a clean claim. Section 1204.102 requires a provider who seeks payment or reimbursement under a health benefit plan and the health benefit plan issuer that issued the plan to use uniform billing forms CMS-1500, UB-82 CMS-1450, or successor forms to those forms developed by the NUBC or its successor. 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.

§21.2801. Purpose and Scope.

The purpose of this subchapter is to specify the definitions and procedures necessary to implement Insurance Code Chapters 843 and 1301 relating to clean claims and prompt payment of physician and provider claims. This subchapter applies to all nonelectronic and electronic claims submitted by contracted physicians or providers for services or benefits provided to insureds of preferred provider carriers, insureds of exclusive provider carriers, and enrollees of health maintenance organizations. The subchapter also has limited applicability to noncontracted physicians and providers. This subchapter does not apply to an exclusive provider benefit plan regulated under Chapter 3, Subchapter KK of this title (relating to Exclusive Provider Benefit Plan) written by an insurer under a contract with the Health and Human Services Commission to provide services under the Texas Children's Health Insurance Program or Medicaid.

§21.2802. Definitions.

The following words and terms when used in this subchapter have the following meanings unless the context clearly indicates otherwise:

(1) Audit--A procedure authorized by and described in §21.2809 of this title (relating to Audit Procedures) under which a managed care carrier (MCC) may investigate a claim beyond the statutory claims payment period without incurring penalties under §21.2815 of this title (relating to Failure to Meet the Statutory Claims Payment Period).

(2) Batch submission--A group of electronic claims submitted for processing at the same time within a HIPAA standard ASC X12N 837 Transaction Set and identified by a batch control number.

(3) Billed charges--The charges for medical care or health care services included on a claim submitted by a physician or a provider. For purposes of this subchapter, billed charges must comply with all other applicable requirements of law, including Health and Safety Code §311.0025, Occupations Code §105.002, and Insurance Code Chapter 552.

(4) CMS--The Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services.

(5) Catastrophic event--An event, including an act of God, civil or military authority, or public enemy; war, accident, fire, explosion, earthquake, windstorm, flood, or organized labor stoppage, that cannot reasonably be controlled or avoided and that causes an interruption in the claims submission or processing activities of an entity for more than two consecutive business days.

(6) Clean claim--

(A) For nonelectronic claims, a claim submitted by a physician or a provider for medical care or health care services rendered to an enrollee under a health care plan or to an insured under a health insurance policy that includes:

(i) the required data elements set out in §21.2803(b) or (c) of this title (relating to Elements of a Clean Claim); and

(ii) if applicable, the amount paid by the primary plan or other valid coverage under §21.2803(d) of this title;

(B) For electronic claims, a claim submitted by a physician or a provider for medical care or health care services rendered to an enrollee under a health care plan or to an insured under a health insurance policy using the ASC X12N 837 format and in compliance with all applicable federal laws related to electronic health care claims, including applicable implementation guides, companion guides, and trading partner agreements.

(7) Condition code--The code utilized by CMS to identify conditions that may affect processing of the claim.

(8) Contracted rate--Fee or reimbursement amount for a preferred provider's services, treatments, or supplies as established by agreement between the preferred provider and the MCC.

(9) Corrected claim--A claim containing clarifying or additional information necessary to correct a previously submitted claim.

(10) Deficient claim--A submitted claim that does not comply with the requirements of §21.2803(b), (c), or (e) of this title.

(11) Diagnosis code--Numeric or alphanumeric codes from the International Classification of Diseases (ICD-9-CM), Diagnostic and Statistical Manual (DSM-IV), or their successors, valid at the time of service.

(12) Duplicate claim--Any claim submitted by a physician or a provider for the same health care service provided to a particular individual on a particular date of service that was included in a previously submitted claim. The term does not include:

(A) corrected claims; or

(B) claims submitted by a physician or a provider at the request of the MCC.

(13) Exclusive provider carrier--An insurer that issues an exclusive provider benefit plan as provided by Insurance Code Chapter 1301.

(14) HMO--A health maintenance organization as defined by Insurance Code §843.002(14).

(15) HMO delivery network--As defined by Insurance Code §843.002(15).

(16) Institutional provider--An institution providing health care services, including, but not limited to, hospitals, other licensed inpatient centers, ambulatory surgical centers, skilled nursing centers, and residential treatment centers.

(17) MCC or managed care carrier--An HMO, a preferred provider carrier, or an exclusive provider carrier.

(18) NPI number--The National Provider Identifier standard unique health identifier number for health care providers assigned under 45 Code of Federal Regulations Part 162 Subpart D or a successor rule.

(19) Occurrence span code--The code used by the Centers for Medicare and Medicaid Services (CMS) to define a specific event relating to the billing period.

(20) Patient control number--A unique alphanumeric identifier assigned by the institutional provider to facilitate retrieval of individual financial records and posting of payment.

(21) Patient financial responsibility--Any portion of the contracted rate for which the patient is responsible under the terms of the patient's health benefit plan.

(22) Patient discharge status code --The code used by CMS to indicate the patient's status at the time of discharge or billing.

(23) Physician--Anyone licensed to practice medicine in this state.

(24) Place of service code--The code used by CMS that identifies the place where the service was rendered.

(25) Point of Origin for Admission or Visit code--The code used by CMS to indicate the source of an inpatient admission.

(26) Preferred provider--

(A) with regard to a preferred provider carrier or an exclusive provider carrier, a preferred provider as defined by Insurance Code §1301.001; and

(B) with regard to an HMO:

(i) a physician, as defined by Insurance Code §843.002, who is a member of that HMO's delivery network; or

(ii) a provider, as defined by Insurance Code §843.002, who is a member of that HMO's delivery network.

(27) Preferred provider carrier--An insurer that issues a preferred provider benefit plan as provided by Insurance Code Chapter 1301.

(28) Primary plan--As defined in §3.3506 of this title (relating to Use of the Terms "Plan," "Primary Plan," "Secondary Plan," and "This Plan" in Policies, Certificates, and Contracts), or in a successor rule adopted by the commissioner.

(29) Procedure code--Any alphanumeric code representing a service or treatment that is part of a medical code set that is adopted by CMS as required by federal statute and valid at the time of service. In the absence of an existing federal code, and for nonelectronic claims only, this definition may also include local codes developed specifically by Medicaid, Medicare, or an MCC to describe a specific service or procedure.

(30) Provider--Any practitioner, institutional provider, or other person or organization that furnishes health care services and that is licensed or otherwise authorized to practice in this state, other than a physician.

(31) Revenue code--The code assigned by CMS to each cost center for which a separate charge is billed.

(32) Secondary plan--As defined in §3.3506 of this title, or in a successor rule adopted by the commissioner.

(33) Statutory claims payment period--

(A) the 45 calendar days during which an MCC must pay or deny a claim, in whole or in part, after receipt of a nonelectronic clean claim under Insurance Code Chapters 843 and 1301, and any extended period permitted under §21.2804 of this title (relating to Requests for Additional Information from Treating Provider) or §21.2819 of this title (relating to Catastrophic Event);

(B) the 30 calendar days during which an MCC must pay or deny a claim, in whole or in part, after receipt of an electronically submitted clean claim under Insurance Code Chapters 843 and 1301, and any extended period permitted under §21.2804 or §21.2819 of this title;

(C) the 21 calendar days during which an MCC must pay a claim after affirmative adjudication of a claim for a prescription benefit that is not electronically submitted under Insurance Code Chapters 843 and 1301 and §21.2814 of this title (relating to Adjudication of Prescription Benefits), and any extended period permitted under §21.2804 or §21.2819; or

(D) the 18 calendar days during which an MCC must make a claim payment after affirmative adjudication of an electronically submitted claim for a prescription benefit under Insurance Code Chapters 843 and 1301 and §21.2814 of this title, and any extended period permitted under §21.2804 or §21.2819 of this title.

(34) Subscriber--If individual coverage, the individual who is the contract holder and is responsible for payment of premiums to the MCC; or if group coverage, the individual who is the certificate holder and whose employment or other membership status, except for family dependency, is the basis for eligibility for enrollment in a group health benefit plan issued by the MCC.

(35) Type of bill code--The three-digit alphanumeric code used by CMS to identify the type of facility, the type of care, and the sequence of the bill in a particular episode of care.

§21.2803. Elements of a Clean Claim.

(a) Filing a clean claim. A physician or a provider submits a clean claim by providing to an MCC or any other entity designated for receipt of claims under §21.2811 of this title (related to Disclosure of Processing Procedures):

(1) for nonelectronic claims other than dental claims, the required data elements specified in subsection (b) of this section;

(2) for nonelectronic dental claims filed with an HMO, the required data elements specified in subsection (c) of this section;

(3) for electronic claims and for electronic dental claims filed with an HMO, the required data elements specified in subsections (e) and (f) of this section; and

(4) if applicable, any coordination of benefits or nonduplication of benefits information under subsection (d) of this section.

(b) Required data elements. CMS has developed claim forms that provide much of the information needed to process claims. Insurance Code Chapter 1204 identifies two of these forms, HCFA 1500 and UB-82/HCFA, and their successor forms, as required for the submission of certain claims. The terms in paragraphs (1) - (3) of this subsection are based on the terms CMS used on successor forms CMS-1500 (02/12), CMS-1500 (08/05), UB-04 CMS-1450, and UB-04. The parenthetical information following each term and data element refers to the applicable CMS claim form and the field number to which that term corresponds on the CMS claim form. Mandatory form usage dates and optional form transition dates for nonelectronic claims filed or refiled by physicians or noninstitutional providers are set out in paragraphs (1) and (2) of this subsection. Mandatory form usage dates and optional form transition dates for nonelectronic claims filed or refiled by institutional providers are set out in paragraph (3) of this subsection.

(1) Required form and data elements for physicians or non-institutional providers for claims filed or refiled on or after the later of April 1, 2014, or the earliest compliance date required by CMS for mandatory use of the CMS-1500 (02/12) claim form for Medicare claims. The CMS-1500 (02/12) claim form and the data elements

described in this paragraph are required for claims filed or refiled by physicians or noninstitutional providers on or after the later of these two dates: April 1, 2014, or the earliest compliance date required by CMS for mandatory use of the CMS-1500 (02/12) claim form for Medicare claims. The CMS-1500 (02/12) claim form must be completed in compliance with the special instructions applicable to the data elements as described by this paragraph for clean claims filed by physicians and noninstitutional providers. Further, on notification that an MCC is prepared to accept claims filed or refiled on form CMS-1500 (02/12), a physician or noninstitutional provider may submit claims on form CMS-1500 (02/12) before the mandatory use date described in this paragraph, subject to the required data elements set out in this paragraph.

(A) subscriber's or patient's plan ID number (CMS-1500 (02/12), field 1a) is required;

(B) patient's name (CMS-1500 (02/12), field 2) is required;

(C) patient's date of birth and sex (CMS-1500 (02/12), field 3) are required;

(D) subscriber's name (CMS-1500 (02/12), field 4) is required if shown on the patient's ID card;

(E) patient's address (street or P.O. Box, city, state, ZIP Code) (CMS-1500 (02/12), field 5) is required;

(F) patient's relationship to subscriber (CMS-1500 (02/12), field 6) is required;

(G) subscriber's address (street or P.O. Box, city, state, ZIP Code) (CMS-1500 (02/12), field 7) is required, but the physician or the provider may enter "Same" if the subscriber's address is the same as the patient's address required by subparagraph (E) of this paragraph;

(H) other insured's or enrollee's name (CMS-1500 (02/12), field 9) is required if the patient is covered by more than one health benefit plan, generally in situations described in subsection (d) of this section. If the required data element specified in subparagraph (N) of this paragraph, "disclosure of any other health benefit plans," is answered "Yes," this element is required unless the physician or the provider submits with the claim documented proof that the physician or the provider has made a good faith but unsuccessful attempt to obtain from the enrollee or the insured any of the information needed to complete this data element;

(I) other insured's or enrollee's policy or group number (CMS-1500 (02/12), field 9a) is required if the patient is covered by more than one health benefit plan, generally in situations described in subsection (d) of this section. If the required data element specified in subparagraph (N) of this paragraph, "disclosure of any other health benefit plans," is answered "Yes," this element is required unless the physician or the provider submits with the claim documented proof that the physician or the provider has made a good faith but unsuccessful attempt to obtain from the enrollee or the insured any of the information needed to complete this data element;

(J) other insured's or enrollee's HMO or insurer name (CMS-1500 (02/12), field 9d) is required if the patient is covered by more than one health benefit plan, generally in situations described in subsection (d) of this section. If the required data element specified in subparagraph (N) of this paragraph, "disclosure of any other health benefit plans," is answered "Yes," this element is required unless the physician or the provider submits with the claim documented proof that the physician or the provider has made a good faith but unsuccessful attempt to obtain from the enrollee or the insured any of the information needed to complete this data element;

(K) whether the patient's condition is related to employment, auto accident, or other accident (CMS-1500 (02/12), field 10) is required, but facility-based radiologists, pathologists, or anesthesiologists must enter "N" if the answer is "No" or if the information is not available;

(L) subscriber's policy number (CMS-1500 (02/12), field 11) is required;

(M) HMO or insurance company name (CMS-1500 (02/12), field 11c) is required;

(N) disclosure of any other health benefit plans (CMS-1500 (02/12), field 11d) is required;

(i) if answered "Yes," then:

(I) data elements specified in subparagraphs (H) - (J) of this paragraph are required unless the physician or the provider submits with the claim documented proof that the physician or the provider has made a good faith but unsuccessful attempt to obtain from the enrollee or the insured any of the information needed to complete the data elements in subparagraphs (H) - (J) of this paragraph;

(II) when submitting claims to secondary payor MCCs the data element specified in subparagraph (GG) of this paragraph is required;

(ii) if answered "No," the data elements specified in subparagraphs (H) - (J) of this paragraph are not required if the physician or the provider has on file a document signed within the past 12 months by the patient or authorized person stating that there is no other health care coverage. Although the submission of the signed document is not a required data element, the physician or the provider must submit a copy of the signed document to the MCC on request;

(O) patient's or authorized person's signature or a notation that the signature is on file with the physician or the provider (CMS-1500 (02/12), field 12) is required;

(P) subscriber's or authorized person's signature or a notation that the signature is on file with the physician or the provider (CMS-1500 (02/12), field 13) is required;

(Q) date of injury (CMS-1500 (02/12), field 14) is required if due to an accident;

(R) when applicable, the physician or the provider must enter the name of the referring primary care physician, specialty physician, hospital, or other source (CMS-1500 (02/12), field 17). However, if there is no referral, the physician or the provider must enter "Self-referral" or "None";

(S) if there is a referring physician noted in CMS-1500 (02/12), field 17, the physician or the provider must enter the ID number of the referring primary care physician, specialty physician, or hospital (CMS-1500 (02/12), field 17a);

(T) if there is a referring physician noted in CMS-1500 (02/12), field 17, the physician or the provider must enter the NPI number of the referring primary care physician, specialty physician, or hospital (CMS-1500 (02/12), field 17b) if the referring physician is eligible for an NPI number;

(U) for diagnosis codes or nature of illness or injury (CMS-1500 (02/12), field 21), the physician or the provider:

(i) must identify the ICD code version being used:

(I) for all claims arising before the date on which CMS mandates the use of the ICD-10-CM for claims filed under the Medicare program, by entering either the number "9" to indicate the

ICD-9-CM or the number "0" to indicate the ICD-10-CM between the vertical, dotted lines in the upper right-hand portion of the field;

(II) for all claims arising on or after the date on which CMS mandates the use of the ICD-10-CM for claims filed under the Medicare program, by entering the number "0" to indicate the ICD-10-CM between the vertical, dotted lines in the upper right-hand portion of the field;

(III) should CMS no longer require identification of the ICD code version being used, may indicate no ICD code version between the vertical dotted lines in the upper right-hand portion of the field;

(ii) must enter at least one diagnosis code, and

(iii) may enter up to 12 diagnosis codes, but the primary diagnosis must be entered first;

(V) if the claim is a duplicate claim, a "D" is required; if the claim is a corrected claim, a "C" is required (CMS-1500 (02/12), field 22);

(W) verification number is required (CMS-1500 (02/12), field 23) if services have been verified as provided by §19.1719 of this title (relating to Verification for Health Maintenance Organizations and Preferred Provider Benefit Plans). If no verification has been provided, a prior authorization number (CMS-1500 (02/12), field 23) is required when prior authorization is required and granted;

(X) date(s) of service (CMS-1500 (02/12), field 24A) is required;

(Y) place of service code(s) (CMS-1500 (02/12), field 24B) is required;

(Z) procedure/modifier code(s) (CMS-1500 (02/12), field 24D) is required. If a physician or a provider uses an unlisted or not classified procedure code or a National Drug Code (NDC), the physician or provider must enter a narrative description of the procedure or the NDC in the shaded area above the corresponding completed service line;

(AA) diagnosis code by specific service (CMS-1500 (02/12), field 24E) is required with the first code linked to the applicable diagnosis code for that service in field 21;

(BB) charge for each listed service (CMS-1500 (02/12), field 24F) is required;

(CC) number of days or units (CMS-1500 (02/12), field 24G) is required;

(DD) the NPI number of the rendering physician or provider (CMS-1500 (02/12), field 24J, unshaded portion) is required if the rendering provider is not the billing provider listed in CMS-1500 (02/12), field 33, and if the rendering physician or provider is eligible for an NPI number;

(EE) physician's or provider's federal tax ID number (CMS-1500 (02/12), field 25) is required;

(FF) whether assignment was accepted (CMS-1500 (02/12), field 27) is required if assignment under Medicare has been accepted;

(GG) total charge (CMS-1500 (02/12), field 28) is required;

(HH) amount paid (CMS-1500 (02/12), field 29) is required if an amount has been paid to the physician or the provider submitting the claim by the patient or subscriber, or on behalf of the patient

or subscriber or by a primary plan in compliance with subparagraph (N) of this paragraph and as required by subsection (d) of this section;

(II) signature of physician or provider or a notation that the signature is on file with the MCC (CMS-1500 (02/12), field 31) is required;

(JJ) name and address of the facility where services were rendered, if other than home, (CMS-1500 (02/12), field 32) is required;

(KK) the NPI number of the facility where services were rendered, if other than home, (CMS-1500 (02/12), field 32a) is required if the facility is eligible for an NPI;

(LL) physician's or provider's billing name, address, and telephone number (CMS-1500 (02/12), field 33) is required; (MM) the NPI number of the billing provider (CMS-1500 (02/12), field 33a) is required if the billing provider is eligible for an NPI number; and (NN) provider number (CMS-1500 (02/12), field 33b) is required if the MCC required provider numbers and gave notice of the requirement to physicians and providers before June 17, 2003.

(2) Required form and data elements for physicians or non-institutional providers for claims filed or refilled before the later of April 1, 2014, or the earliest compliance date required by CMS for mandatory use of the CMS-1500 (02/12) claim form for Medicare claims. The CMS-1500 (08/05) claim form and the data elements described in this paragraph are required for claims filed or refilled by physicians or noninstitutional providers before the later of these two dates: April 1, 2014, or the earliest compliance date required by CMS for mandatory use of the CMS-1500 (02/12) claim form for Medicare claims. The CMS-1500 (08/05) claim form must be completed in compliance with the special instructions applicable to the data element as described in this paragraph for clean claims filed by physicians and noninstitutional providers. However, on notification that an MCC is prepared to accept claims filed or refilled on form CMS-1500 (02/12), a physician or noninstitutional provider may submit claims on form CMS-1500 (02/12) before the subsection (b)(1) of this section mandatory use date described in this paragraph, subject to the subsection (b)(1) of this section required data elements set out in the paragraph.

(A) subscriber's or patient's plan ID number (CMS-1500 (08/05), field 1a) is required;

(B) patient's name (CMS-1500 (08/05), field 2) is required;

(C) patient's date of birth and sex (CMS-1500 (08/05), field 3) is required;

(D) subscriber's name (CMS-1500 (08/05), field 4) is required, if shown on the patient's ID card;

(E) patient's address (street or P.O. Box, city, state, ZIP Code) (CMS-1500 (08/05), field 5) is required;

(F) patient's relationship to subscriber (CMS-1500 (08/05), field 6) is required;

(G) subscriber's address (street or P.O. Box, city, state, ZIP Code) (CMS-1500 (08/05), field 7) is required, but physician or provider may enter "Same" if the subscriber's address is the same as the patient's address required by subparagraph (E) of this paragraph;

(H) other insured's or enrollee's name (CMS-1500 (08/05), field 9) is required if the patient is covered by more than one health benefit plan, generally in situations described in subsection (d) of this section. If the required data element specified in subparagraph (Q) of this paragraph, "disclosure of any other health benefit plans," is answered "Yes," this element is required unless the physician or the

provider submits with the claim documented proof that the physician or the provider has made a good faith but unsuccessful attempt to obtain from the enrollee or the insured any of the information needed to complete this data element;

(I) other insured's or enrollee's policy or group number (CMS-1500 (08/05), field 9a) is required if the patient is covered by more than one health benefit plan, generally in situations described in subsection (d) of this section. If the required data element specified in subparagraph (Q) of this paragraph, "disclosure of any other health benefit plans," is answered "Yes," this element is required unless the physician or the provider submits with the claim documented proof that the physician or the provider has made a good faith but unsuccessful attempt to obtain from the enrollee or the insured any of the information needed to complete this data element;

(J) other insured's or enrollee's date of birth (CMS-1500 (08/05), field 9b) is required if the patient is covered by more than one health benefit plan, generally in situations described in subsection (d) of this section. If the required data element specified in subparagraph (Q) of this paragraph, "disclosure of any other health benefit plans," is answered "Yes," this element is required unless the physician or the provider submits with the claim documented proof that the physician or the provider has made a good faith but unsuccessful attempt to obtain from the enrollee or the insured any of the information needed to complete this data element;

(K) other insured's or enrollee's plan name (employer, school, etc.), (CMS-1500 (08/05), field 9c) is required if the patient is covered by more than one health benefit plan, generally in situations described in subsection (d) of this section. If the required data element specified in subparagraph (Q) of this paragraph, "disclosure of any other health benefit plans," is answered "Yes," this element is required unless the physician or the provider submits with the claim documented proof that the physician or the provider has made a good faith but unsuccessful attempt to obtain from the enrollee or the insured any of the information needed to complete this data element. If the field is required and the physician or the provider is a facility-based radiologist, pathologist, or anesthesiologist with no direct patient contact, the physician or the provider must either enter the information or enter "NA" (not available) if the information is unknown;

(L) other insured's or enrollee's HMO or insurer name (CMS-1500 (08/05), field 9d) is required if the patient is covered by more than one health benefit plan, generally in situations described in subsection (d) of this section. If the required data element specified in subparagraph (Q) of this paragraph, "disclosure of any other health benefit plans," is answered "Yes," this element is required unless the physician or the provider submits with the claim documented proof that the physician or the provider has made a good faith but unsuccessful attempt to obtain from the enrollee or the insured any of the information needed to complete this data element;

(M) whether the patient's condition is related to employment, auto accident, or other accident (CMS-1500 (08/05), field 10) is required, but facility-based radiologists, pathologists, or anesthesiologists must enter "N" if the answer is "No" or if the information is not available;

(N) if the claim is a duplicate claim, a "D" is required; if the claim is a corrected claim, a "C" is required (CMS-1500 (08/05), field 10d);

(O) subscriber's policy number (CMS-1500 (08/05), field 11) is required;

(P) HMO or insurance company name (CMS-1500 (08/05), field 11c) is required;

(Q) disclosure of any other health benefit plans (CMS-1500 (08/05), field 11d) is required;

(i) if answered "Yes," then:

(I) data elements specified in subparagraphs (H) - (L) of this paragraph are required unless the physician or the provider submits with the claim documented proof that the physician or the provider has made a good faith but unsuccessful attempt to obtain from the enrollee or the insured any of the information needed to complete the data elements in subparagraphs (H) - (L) of this paragraph;

(II) the data element specified in subparagraph (KK) of this paragraph is required when submitting claims to secondary payor MCCs;

(ii) if answered "No," the data elements specified in subparagraphs (H) - (L) of this paragraph are not required if the physician or the provider has on file a document signed within the past 12 months by the patient or authorized person stating that there is no other health care coverage. Although the submission of the signed document is not a required data element, the physician or the provider must submit a copy of the signed document to the MCC on request;

(R) patient's or authorized person's signature or a notation that the signature is on file with the physician or the provider (CMS-1500 (08/05), field 12) is required;

(S) subscriber's or authorized person's signature or a notation that the signature is on file with the physician or the provider (CMS-1500 (08/05), field 13) is required;

(T) date of injury (CMS-1500 (08/05), field 14) is required if due to an accident;

(U) when applicable, the physician or the provider must enter the name of the referring primary care physician, specialty physician, hospital, or other source (CMS-1500 (08/05), field 17). However, if there is no referral, the physician or the provider must enter "Self-referral" or "None";

(V) if there is a referring physician noted in CMS-1500 (08/05), field 17, the physician or the provider must enter the ID Number of the referring primary care physician, specialty physician, or hospital (CMS-1500 (08/05), field 17a);

(W) if there is a referring physician noted in CMS-1500 (08/05), field 17, the physician or the provider must enter the NPI number of the referring primary care physician, specialty physician, or hospital (CMS-1500 (08/05), field 17b) if the referring physician is eligible for an NPI number;

(X) narrative description of procedure (CMS-1500 (08/05), field 19) is required when a physician or a provider uses an unlisted or unclassified procedure code or an NDC code for drugs;

(Y) for diagnosis codes or nature of illness or injury (CMS-1500 (08/05), field 21), up to four diagnosis codes may be entered. At least one is required, but the primary diagnosis must be entered first;

(Z) verification number (CMS-1500 (08/05), field 23) is required if services have been verified under §19.1719 of this title (relating to Verification for Health Maintenance Organizations and Preferred Provider Benefit Plans). If no verification has been provided, a prior authorization number (CMS-1500 (08/05), field 23) is required when prior authorization is required and granted;

(AA) date(s) of service (CMS-1500 (08/05), field 24A) is required;

(BB) place of service code(s) (CMS-1500 (08/05), field 24B) is required;

(CC) procedure/modifier code (CMS-1500 (08/05), field 24D) is required;

(DD) diagnosis code by specific service (CMS-1500 (08/05), field 24E) is required with the first code linked to the applicable diagnosis code for that service in field 21;

(EE) charge for each listed service (CMS-1500 (08/05), field 24F) is required;

(FF) number of days or units (CMS-1500 (08/05), field 24G) is required;

(GG) the NPI number of the rendering physician or provider (CMS-1500 (08/05), field 24J, unshaded portion) is required if the rendering provider is not the billing provider listed in CMS-1500 (08/05), field 33, and if the rendering physician or provider is eligible for an NPI number;

(HH) physician's or provider's federal tax ID number (CMS-1500 (08/05), field 25) is required;

(II) whether assignment was accepted (CMS-1500 (08/05), field 27) is required if assignment under Medicare has been accepted;

(JJ) total charge (CMS-1500 (08/05), field 28) is required;

(KK) amount paid (CMS-1500 (08/05), field 29) is required if an amount has been paid to the physician or the provider submitting the claim by the patient or subscriber, or on behalf of the patient or subscriber or by a primary plan to comply with subparagraph (Q) of this paragraph and as required by subsection (d) of this section;

(LL) signature of physician or provider or a notation that the signature is on file with the MCC (CMS-1500 (08/05), field 31) is required;

(MM) name and address of the facility where services were rendered, if other than home, (CMS-1500 (08/05), field 32) is required;

(NN) the NPI number of the facility where services were rendered, if other than home, (CMS-1500 (08/05), field 32a) is required if the facility is eligible for an NPI;

(OO) physician's or provider's billing name, address, and telephone number (CMS-1500 (08/05), field 33) is required;

(PP) the NPI number of the billing provider (CMS-1500 (08/05), field 33a) is required if the billing provider is eligible for an NPI number; and

(QQ) provider number (CMS-1500 (08/05), field 33b) is required if the MCC required provider numbers and gave notice of the requirement to physicians and providers before June 17, 2003.

(3) Required form and data elements for institutional providers. The UB-04 claim form and the data elements described in this paragraph are required for claims filed or refiled by institutional providers. The UB-04 claim form must be completed under the special instructions applicable to the data elements as described by this paragraph for clean claims filed by institutional providers.

(A) provider's name, address, and telephone number (UB-04, field 1) are required;

(B) patient control number (UB-04, field 3a) is required;

(C) type of bill code (UB-04, field 4) is required and must include a "7" in the fourth position if the claim is a corrected claim;

(D) provider's federal tax ID number (UB-04, field 5) is required;

(E) statement period (beginning and ending date of claim period) (UB-04, field 6) is required;

(F) patient's name (UB-04, field 8a) is required;

(G) patient's address (UB-04, field 9a - 9e) is required;

(H) patient's date of birth (UB-04, field 10) is required;

(I) patient's sex (UB-04, field 11) is required;

(J) date of admission (UB-04, field 12) is required for admissions, observation stays, and emergency room care;

(K) admission hour (UB-04, field 13) is required for admissions, observation stays, and emergency room care;

(L) type of admission (such as emergency, urgent, elective, newborn) (UB-04, field 14) is required for admissions;

(M) point of origin for admission or visit code (UB-04, field 15) is required;

(N) discharge hour (UB-04, field 16) is required for admissions, outpatient surgeries, or observation stays;

(O) patient discharge status code (UB-04, field 17) is required for admissions, observation stays, and emergency room care;

(P) condition codes (UB-04, fields 18 - 28) are required if the CMS UB-04 manual contains a condition code appropriate to the patient's condition;

(Q) occurrence codes and dates (UB-04, fields 31 - 34) are required if the CMS UB-04 manual contains an occurrence code appropriate to the patient's condition;

(R) occurrence span codes and from and through dates (UB-04, fields 35 and 36) are required if the CMS UB-04 manual contains an occurrence span code appropriate to the patient's condition;

(S) value code and amounts (UB-04, fields 39 - 41) are required for inpatient admissions, and may be entered as value code "01" if no value codes are applicable to the inpatient admission;

(T) revenue code (UB-04, field 42) is required;

(U) revenue description (UB-04, field 43) is required;

(V) Healthcare Common Procedure Coding System (HCPCS) codes or rates (UB-04, field 44) are required if Medicare is a primary or secondary payor;

(W) service date (UB-04, field 45) is required if the claim is for outpatient services;

(X) date bill submitted (UB-04, field 45, line 23) is required;

(Y) units of service (UB-04, field 46) are required;

(Z) total charge (UB-04, field 47) is required;

(AA) MCC name (UB-04, field 50) is required;

(BB) prior payments-payor (UB-04, field 54) are required if payments have been made to the provider by a primary plan as required by subsection (d) of this section;

(CC) the NPI number of the billing provider (UB-04, field 56) is required if the billing provider is eligible for an NPI number;

(DD) other provider number (UB-04, field 57) is required if the HMO or preferred provider carrier, before June 17, 2003, required provider numbers and gave notice of that requirement to physicians and providers;

(EE) subscriber's name (UB-04, field 58) is required if shown on the patient's ID card;

(FF) patient's relationship to subscriber (UB-04, field 59) is required;

(GG) patient's or subscriber's certificate number, health claim number, and ID number (UB-04, field 60) are required if shown on the patient's ID card;

(HH) insurance group number (UB-04, field 62) is required if a group number is shown on the patient's ID card;

(II) verification number (UB-04, field 63) is required if services have been verified under §19.1719 of this title. If no verification has been provided, treatment authorization codes (UB-04, field 63) are required when authorization is required and granted;

(JJ) principal diagnosis code (UB-04, field 67) is required;

(KK) diagnosis codes other than principal diagnosis code (UB-04, fields 67A - 67Q) are required if there are diagnoses other than the principal diagnosis;

(LL) admitting diagnosis code (UB-04, field 69) is required;

(MM) principal procedure code (UB-04, field 74) is required if the patient has undergone an inpatient or outpatient surgical procedure;

(NN) other procedure codes (UB-04, fields 74 - 74e) are required as an extension of subparagraph (MM) of this paragraph if additional surgical procedures were performed;

(OO) attending physician NPI number (UB-04, field 76) is required if the attending physician is eligible for an NPI number; and

(PP) attending physician ID (UB-04, field 76, qualifier portion) is required.

(c) Required data elements for dental claims. The data elements described in this subsection are required as indicated and must be completed or provided under the special instructions applicable to the data elements for nonelectronic clean claims filed by dental providers with HMOs.

- (1) patient's name is required;
- (2) patient's address is required;
- (3) patient's date of birth is required;
- (4) patient's sex is required;
- (5) patient's relationship to subscriber is required;
- (6) subscriber's name is required;
- (7) subscriber's address is required, but the provider may enter "Same" if the subscriber's address is the same as the patient's address required by paragraph (2) of this subsection;
- (8) subscriber's date of birth is required, if shown on the patient's ID card;

- (9) subscriber's sex is required;
- (10) subscriber's identification number is required, if shown on the patient's ID card;
- (11) subscriber's plan or group number is required, if shown on the patient's ID card;
- (12) HMO's name is required;
- (13) HMO's address is required;
- (14) disclosure of any other plan providing dental benefits is required and must include a "No" if the patient is not covered by another plan providing dental benefits. If the patient does have other coverage, the provider must indicate "Yes," and the elements in paragraphs (15) - (20) of this subsection are required unless the provider submits with the claim documented proof that the provider has made a good faith but unsuccessful attempt to obtain from the enrollee any of the information needed to complete the data elements;
- (15) other insured's or enrollee's name is required as called for by the response to and requirements of paragraph (14) of this subsection;
- (16) other insured's or enrollee's date of birth is required as called for by the response to and requirements of the element in paragraph (14) of this subsection;
- (17) other insured's or enrollee's sex is required as called for by the response to and requirements of the element in paragraph (14) of this subsection;
- (18) other insured's or enrollee's identification number is required as called for by the response to and requirements of the element in paragraph (14) of this subsection;
- (19) patient's relationship to other insured or enrollee is required as called for by the response to and requirements of the element in paragraph (14) of this subsection;
- (20) name of other HMO or insurer is required as called for by the response to and requirements of the element in paragraph (14) of this subsection;
- (21) verification or preauthorization number is required, if a verification or preauthorization number was issued by an HMO to the provider;
- (22) date(s) of service(s) or procedure(s) is required;
- (23) area of oral cavity is required, if applicable;
- (24) tooth system is required, if applicable;
- (25) tooth number(s) or letter(s) are required, if applicable;
- (26) tooth surface is required, if applicable;
- (27) procedure code for each service is required;
- (28) description of procedure for each service is required, if applicable;
- (29) charge for each listed service is required;
- (30) total charge for the claim is required;
- (31) missing teeth information is required, if a prosthesis constitutes part of the claim. A provider that provides information for this element must include the tooth number(s) or letter(s) of the missing teeth;
- (32) notification of whether the services were for orthodontic treatment is required. If the services were for orthodontic treatment, the elements in paragraphs (33) and (34) of this subsection are required;

- (33) date of orthodontic appliance placement is required, if applicable;
- (34) months of orthodontic treatment remaining is required, if applicable;
- (35) notification of placement of prosthesis is required, if applicable. If the services included placement of a prosthesis, the element in paragraph (36) of this subsection is required;
- (36) date of prior prosthesis placement is required, if applicable;
- (37) name of billing provider is required;
- (38) address of billing provider is required;
- (39) billing provider's provider identification number is required, if applicable;
- (40) billing provider's license number is required;
- (41) billing provider's social security number or federal tax identification number is required;
- (42) billing provider's telephone number is required; and
- (43) treating provider's name and license number are required if the treating provider is not the billing provider.

(d) Coordination of benefits or nonduplication of benefits.

(1) If a claim is submitted for covered services or benefits for which coordination of benefits is necessary under §§3.3501 - 3.3511 of this title (relating to Group Coordination of Benefits), a successor rule adopted by the commissioner, or §11.511(1) of this title (relating to Optional Provisions), the amount paid as a covered claim by the primary plan is a required element of a clean claim for purposes of the secondary plan's claim processing and CMS-1500 (02/12), field 29, or CMS-1500 (08/05), field 29, or UB-04, field 54, as applicable, must be completed under subsection (b)(1)(GG), (2)(KK), and (3)(BB) of this section.

(2) If a claim is submitted for covered services or benefits for which nonduplication of benefits under §3.3053 of this title (relating to Non-duplication of Benefits Provision) is an issue, the amounts paid as a covered claim by all other valid coverage is a required element of a clean claim, and CMS-1500 (02/12), field 29, or CMS-1500 (08/05), field 29, or UB-04, field 54, as applicable, must be completed under subsection (b)(1)(GG), (2)(KK), and (3)(BB) of this section.

(3) If a claim is submitted for covered services or benefits and the policy contains a variable deductible provision as set out in §3.3074(a)(4) of this title (relating to Minimum Standards for Major Medical Expense Coverage), the amount paid as a covered claim by all other health insurance coverages, except for amounts paid by individually underwritten and issued hospital confinement indemnity, specified disease, or limited benefit plans of coverage, is a required element of a clean claim, and CMS-1500 (02/12), field 29, or CMS-1500 (08/05), field 29, or UB-04, field 54, as applicable, must be completed under subsection (b)(1)(GG), (2)(KK), and (3)(BB) of this section. Despite these requirements, an MCC may not require a physician or a provider to investigate coordination of other health benefit plan coverage.

(e) Submission of electronic clean claim. A physician or a provider submits an electronic clean claim by using the applicable format that complies with all applicable federal laws related to electronic health care claims, including applicable implementation guides, companion guides, and trading partner agreements.

(f) Coordination of benefits on electronic clean claims. If a physician or a provider submits an electronic clean claim that requires

coordination of benefits under §§3.3501 - 3.3511 of this title, a successor rule adopted by the commissioner, or §11.511(1) of this title, the MCC processing the claim as a secondary payor must rely on the primary payor information submitted on the claim by the physician or the provider. The primary payor may submit primary payor information electronically to the secondary payor using the ASC X12N 837 format and in compliance with federal laws related to electronic health care claims, including applicable implementation guides, companion guides, and trading partner agreements.

(g) Format of elements. The elements of a clean claim set out in subsections (b) - (f) of this section, as applicable, must be complete, legible, and accurate.

(h) Additional data elements or information. The submission of data elements or information on or with a claim form by a physician or a provider in addition to those required for a clean claim under this section does not render such claim deficient.

§21.2804. Requests for Additional Information from Treating Preferred Provider.

(a) If necessary to determine whether a claim is payable, an MCC may, within 30 days of receipt of a clean claim, request additional information from the treating preferred provider. The time to request additional information may be extended as allowed by §21.2819(c) of this title (relating to Catastrophic Event). An MCC may make only one request to the submitting treating preferred provider for information under this section.

(b) A request for information under this section must:

- (1) be in writing;
- (2) be specific to the claim or the claim's related episode of care;
- (3) describe with specificity the clinical and other information to be included in the response;
- (4) be relevant and necessary for the resolution of the claim; and
- (5) be for information that is contained in or in the process of being incorporated into the patient's medical or billing record maintained by the preferred provider.

(c) An MCC that requests information under this section must determine whether the claim is payable and pay or deny the claim, or audit the claim in compliance with §21.2809 of this title (relating to Audit Procedures), on or before the later of:

- (1) the 15th day after the date the MCC receives the requested information as required under subsection (e) of this section;
- (2) the 15th day after the date the MCC receives a response under subsection (d) of this section; or
- (3) the latest date for determining whether the claim is payable under §21.2807 of this title (relating to Effect of Filing a Clean Claim).

(d) If a preferred provider does not possess the requested information, the preferred provider must submit a written response indicating that the preferred provider does not possess the requested information in order to resume the claims payment period as described in subsection (c) of this section.

(e) An MCC must require the preferred provider responding to a request made under this section to either attach a copy of the request to the response or include with the response the name of the patient, the patient identification number, the claim number as provided

by the MCC, the date of service, and the name of the treating preferred provider. If the MCC submitted the request for additional information electronically in compliance with federal requirements concerning electronic transactions, the treating preferred provider must submit the response in compliance with those requirements. To resume the claims payment period as described in subsection (c) of this section, the treating preferred provider must deliver the requested information in compliance with this subsection.

(f) Receipt of a request or a response to a request under this section is subject to the provisions of §21.2816 of this title (relating to Date of Receipt).

§21.2805. Requests for Additional Information from Other Sources.

(a) If an MCC requests additional information from a person other than the preferred provider who submitted the claim, the MCC must provide to the preferred provider who submitted the claim a notice containing the name of the physician, the provider, or the other entity from which the MCC is requesting information. The MCC may not withhold payment beyond the applicable statutory claims payment period pending receipt of information requested under subsection (b) of this section. If, on receiving information requested under this subsection the MCC determines that there was an error in payment of the claim, the MCC may recover any overpayment under §21.2818 of this title (relating to Overpayment of Claims).

(b) An MCC must request that the entity responding to a request made under this section attach a copy of the request to the response. If the request for additional information was submitted electronically in compliance with applicable federal requirements concerning electronic transactions, the responding entity must submit the response in compliance with those requirements, if applicable.

(c) Receipt of a request or a response to a request under this section is subject to the provisions of §21.2816 of this title (relating to Date of Receipt).

§21.2806. Claim Filing Deadline.

(a) Claim submission deadline. A physician or a provider must submit a claim to an MCC not later than the 95th day after the date the physician or the provider delivers the medical care or health care services for which the claim is made. An MCC and a physician or a provider may agree, by contract, to extend the period for submitting a claim. For a claim submitted by an institutional provider, the 95-day period does not begin until the date of discharge. For a claim for which coordination of benefits applies, the 95-day period does not begin for submission of the claim to the secondary payor until the physician or the provider receives notice of the payment or the denial from the primary payor.

(b) Failure to meet claim submission deadline. If a physician or a provider fails to submit a claim in compliance with this section, the physician or the provider forfeits the right to payment unless the physician or the provider has certified that the failure to timely submit the claim is a result of a catastrophic event in compliance with §21.2819 of this title (relating to Catastrophic Event).

(c) Manner of claim submission. A physician or a provider may submit claims by United States mail, first class; United States mail, return receipt requested; overnight delivery service; electronic transmission; hand delivery; facsimile, if the MCC accepts claims submitted by facsimile; or as otherwise agreed to by the physician or the provider and the MCC. An MCC must accept as proof of timely filing a claim filed in compliance with this subsection or information from another MCC showing that the physician or the provider submitted the claim to the other MCC in compliance with this subsection.

(d) Determining date of submission. Section 21.2816 of this title (relating to Date of Receipt) determines the date an MCC receives a claim.

(e) Duplicate claims.

(1) A physician or a provider may not submit a duplicate claim before the 46th day, or the 31st day if filed electronically, after the date the original claim is received according to the provisions of §21.2816 of this title, except as provided in paragraph (2) of this subsection for prescription benefit claims.

(2) A physician or a provider may not submit a duplicate claim for prescription benefits before the 22nd day, or the 19th day if filed electronically, after the date the original claim is received according to the provisions of §21.2816 of this title.

(3) An MCC that receives a duplicate claim before the applicable date specified in paragraphs (1) and (2) of this subsection is not subject to the provisions of §21.2807 of this title (relating to Effect of Filing a Clean Claim) or §21.2815 of this title (relating to Failure to Meet the Statutory Claims Payment Period) with respect to the duplicate claim.

§21.2807. Effect of Filing a Clean Claim.

(a) The statutory claims payment period begins to run on receipt of a clean claim, including a corrected claim that is a clean claim, from a preferred provider, under §21.2816 of this title (relating to Date of Receipt), at the address designated by the MCC, in compliance with §21.2811 of this title (relating to Disclosure of Processing Procedures), whether it be the address of the MCC or any other entity, including a clearinghouse or a repricing company, designated by the MCC to receive claims. The date of claim payment is determined in §21.2810 of this title (relating to Date of Claim Payment).

(b) After receipt of a clean claim and before the expiration of the applicable statutory claims payment period specified in §21.2802 of this title (relating to Definitions), an MCC must:

(1) pay the total amount of the clean claim as specified in the contract between the preferred provider and the MCC;

(2) deny the clean claim in its entirety after a determination that the MCC is not liable for the clean claim and notify the preferred provider in writing why the clean claim will not be paid;

(3) notify the preferred provider in writing that the entire clean claim will be audited and pay 100 percent of the contracted rate on the claim to the preferred provider; or

(4) pay the portion of the clean claim for which the MCC acknowledges liability as specified in the contract between the preferred provider and the MCC, and:

(A) deny the remainder of the clean claim after a determination that the MCC is not liable for the remainder of the clean claim and notify the preferred provider in writing why the remainder of the clean claim will not be paid; or

(B) notify the preferred provider in writing that the remainder of the clean claim will be audited and pay 100 percent of the contracted rate on the unpaid portion of the clean claim to the preferred provider.

(c) An MCC or an MCC's clearinghouse that receives an electronic clean claim is subject to the requirements of this subchapter regardless of whether the claim is submitted together with, or in a batch submission with, a claim that is deficient.

§21.2808. Effect of Filing a Deficient Claim.

If an MCC determines that a submitted claim is deficient, the MCC must notify the preferred provider submitting the claim that the claim is deficient within 45 calendar days of the MCC's receipt of the non-electronic claim, or within 30 days of receipt of an electronic claim. If an MCC determines that a claim for a prescription benefit is deficient, the MCC must notify the provider that the claim is deficient within 21 calendar days of the MCC's receipt of the nonelectronic claim, or within 18 days of receipt of an electronic claim.

§21.2809. Audit Procedures.

(a) Notice and payment required. If an MCC is unable to pay or deny a clean claim, in whole or in part, within the applicable statutory claims payment period specified in §21.2802 of this title (relating to Definitions) and intends to audit the claim to determine whether the claim is payable, the MCC must notify the preferred provider that the claim is being audited and pay 100 percent of the contracted rate within the applicable statutory claims payment period.

(b) Failure to provide notice and payment. An MCC that fails to provide notice of the decision to audit the claim and pay 100 percent of the applicable contracted rate subject to copayments and deductibles within the applicable statutory claims payment period, or, if applicable, the extended periods allowed for by §21.2804(c) of this title (relating to Requests for Additional Information from Treating Preferred Provider) or §21.2819(c) of this title (relating to Catastrophic Event), may not make use of the audit procedures set out in this section. A preferred provider that receives less than 100 percent of the contracted rate with a notice of intent to audit has received an underpayment and must notify the MCC within 270 days in compliance with the provisions of §21.2815(f)(2) of this title (relating to Failure to Meet the Statutory Claims Payment Period) to qualify to receive a penalty for the underpaid amount.

(c) Explanation of payment. The MCC must clearly indicate on the explanation of payment that the claim is being audited and that the preferred provider is being paid 100 percent of the contracted rate, subject to completion of the audit. A nonelectronic explanation of payment complies with this requirement if the notice of the audit is clearly and prominently identified.

(d) Audit deadline and requirements. The MCC must complete the audit within 180 calendar days from receipt of the clean claim. The HMO or preferred provider carrier must provide written notice of the results of the audit. The MCC must include in the notice a listing of the specific claims paid and not paid under the audit, as well as a listing of specific claims and amounts for which a refund is due and, for each claim, the basis and specific reasons for requesting a refund. An MCC seeking recovery of any refund under this section must comply with the procedures set out in §21.2818 of this title (relating to Overpayment of Claims).

(e) Requests for information. An MCC may recover the total amount paid on the claim under subsection (a) of this section if a physician or a provider fails to timely provide additional information requested under the requirements of Insurance Code §1301.105 or §843.340(c). Section 21.2816 of this title (relating to Date of Receipt) applies to the submission and receipt of a request for information under this subsection.

(f) Opportunity for appeal. Before seeking a refund for a payment made under this section, an MCC must provide a preferred provider with the opportunity to appeal the request for a refund in compliance with §21.2818 of this title. An MCC may not seek to recover the refund until all of the preferred provider's internal appeal rights under §21.2818 of this title have been exhausted.

(g) No admission of liability. Payments made under this section on a clean claim are not an admission that the MCC acknowledges liability on that claim.

§21.2811. Disclosure of Processing Procedures.

(a) In contracts with preferred providers, or in the physician or the provider manual or other document that sets forth the procedure for filing claims, or by any other method mutually agreed on by the contracting parties, an MCC must disclose to its preferred providers:

(1) the address, including a physical address, where claims are to be sent for processing;

(2) the telephone number to which preferred providers' questions and concerns regarding claims may be directed;

(3) any entity, along with its address, including physical address and telephone number, to which the MCC has delegated claim payment functions; and

(4) the mailing address, physical address, and telephone number of any separate claims processing centers for specific types of services.

(b) An MCC must provide no less than 60 calendar days prior written notice of any changes of address for submission of claims, and of any changes of delegation of claims payment functions, to all affected preferred providers.

§21.2812. Denial of Clean Claim Prohibited for Change of Address.

After a change of claims payment address or a change in delegation of claims payment functions, an MCC may not premise the denial of a clean claim on a preferred provider's failure to file a claim within the claim filing deadline set out in §21.2806 of this title (relating to Claim Filing Deadline), unless the MCC has given timely written notice as required by §21.2811(b) of this title (relating to Disclosure of Processing Procedures).

§21.2813. Requirements Applicable to Other Contracting Entities.

Any contract or delegation agreement between an MCC and an entity that processes or pays claims, obtains the services of physicians and providers to provide health care services, or issues verifications or preauthorizations may not limit the MCC's authority or responsibility to comply with all applicable statutory and regulatory requirements.

§21.2814. Adjudication of Prescription Benefits.

If a prescription benefit does not require authorization by an MCC, the statutory claims payment period must begin on the date of affirmative adjudication of the claim for a prescription benefit.

§21.2815. Failure to Meet the Statutory Claims Payment Period.

(a) An MCC that determines under §21.2807 of this title (relating to Effect of Filing a Clean Claim) that a claim is payable must pay the contracted rate owed on the claim; and:

(1) if the claim is paid on or before the 45th day after the end of the applicable statutory claims payment period, pay to a noninstitutional preferred provider a penalty in the amount of the lesser of:

(A) 50 percent of the difference between the billed charges and the contracted rate; or

(B) \$100,000;

(2) if the claim is paid on or after the 46th day and before the 91st day after the end of the applicable statutory claims payment period, pay to a noninstitutional preferred provider, a penalty in the amount of the lesser of:

(A) 100 percent of the difference between the billed charges and the contracted rate; or

(B) \$200,000;

(3) if the claim is paid on or after the 91st day after the end of the applicable statutory claims payment period:

(A) pay to the noninstitutional preferred provider a penalty computed under paragraph (2) of this subsection; and

(B) pay to the Texas Health Insurance Pool until its dissolution, and after its dissolution to Texas Department of Insurance (the department) 18 percent annual interest on the penalty amount paid to a noninstitutional preferred provider under paragraph (2) of this subsection. Interest under this paragraph accrues beginning on the date the MCC was required to pay the claim and ending on the date the claim and the penalty are paid in full to the noninstitutional provider;

(4) if the claim is paid to an institutional preferred provider on or before the 45th day after the end of the applicable statutory claims payment period, pay a penalty in the amount specified in subparagraph (A) or (B) of this paragraph. The MCC must pay 50 percent of the penalty to the institutional preferred provider and 50 percent of the penalty to the Texas Health Insurance Pool until its dissolution, and after its dissolution to the department. The penalty under this paragraph is in the amount of the lesser of:

(A) 50 percent of the difference between the billed charges and the contracted rate; or

(B) \$100,000;

(5) if the claim is paid to an institutional preferred provider on or after the 46th day and before the 91st day after the end of the applicable statutory claims payment period, pay a penalty in the amount specified in subparagraph (A) or (B) of this paragraph. The MCC must pay 50 percent of the penalty to the institutional preferred provider and 50 percent of the penalty to the Texas Health Insurance Pool until its dissolution, and after its dissolution to the department. The penalty under this paragraph is in the amount of the lesser of:

(A) 100 percent of the difference between the billed charges and the contracted rate; or

(B) \$200,000; and

(6) if the claim is paid to an institutional preferred provider on or after the 91st day after the end of the applicable statutory claims payment period:

(A) pay the penalty amount to the institutional provider and the Texas Health Insurance Pool until its dissolution, and after its dissolution to the department as specified in paragraph (5) of this subsection; and

(B) pay 18 percent annual interest on the penalty amount computed under paragraph (5) of this subsection. Interest under this paragraph accrues beginning on the date the MCC was required to pay the claim and ending on the date the claim and the institutional provider's portion of the penalty are paid in full. The MCC must pay 50 percent of the interest to the institutional preferred provider and 50 percent of the interest to the Texas Health Insurance Pool until its dissolution, and after its dissolution to the department.

(b) The following examples demonstrate how to calculate penalty amounts under subsection (a)(1) - (3) of this section:

(1) if the contracted rate, including any patient financial responsibility, is \$10,000 and the billed charges are \$15,000, and the MCC pays the claim on or before the 45th day after the end of the

applicable statutory claims payment period, the MCC must pay, in addition to the amount owed on the claim, 50 percent of the difference between the billed charges (\$15,000) and the contracted rate (\$10,000) or \$2,500. The basis for the penalty is the difference between the total contracted amount, including any patient financial responsibility, and the noninstitutional provider's billed charges;

(2) if the claim is paid on or after the 46th day and before the 91st day after the end of the applicable statutory claims payment period, the MCC must pay, in addition to the contracted rate owed on the claim, 100 percent of the difference between the billed charges and the contracted rate or \$5,000; and

(3) if the claim is paid on or after the 91st day after the end of the applicable statutory claims payment period, the MCC must pay to the noninstitutional provider, in addition to the contracted rate owed on the claim, the \$5,000 penalty. The MCC must also pay to the Texas Health Insurance Pool until its dissolution, and after its dissolution to the department 18 percent annual interest on the \$5,000 penalty amount accruing from the statutory claim payment deadline until the date the claim and penalty are paid in full to the noninstitutional provider.

(c) Except as provided by this section, an MCC that determines under §21.2807 of this title that a claim is payable, pays only a portion of the amount of the claim on or before the end of the applicable statutory claims payment period, and pays the balance of the contracted rate owed for the claim after that date must, in addition to paying the contracted amount owed:

(1) if the balance of the claim is paid to a noninstitutional preferred provider on or before the 45th day after the applicable statutory claims payment period, pay to the preferred provider a penalty on the amount not timely paid in the amount of the lesser of:

- (A) 50 percent of the underpaid amount; or
- (B) \$100,000;

(2) if the balance of the claim is paid to a noninstitutional preferred provider on or after the 46th day and before the 91st day after the end of the applicable statutory claims payment period, pay to the preferred provider a penalty in the amount of the lesser of:

- (A) 100 percent of the underpaid amount; or
- (B) \$200,000;

(3) if the balance of the claim is paid to a noninstitutional preferred provider on or after the 91st day after the end of the applicable statutory claims payment period, pay to the preferred provider a penalty computed under paragraph (2) of this subsection plus 18 percent annual interest on the penalty amount. Interest under this subsection accrues beginning on the date the MCC was required to pay the claim and ending on the date the claim and the penalty are paid in full;

(4) if the balance of the claim is paid to an institutional preferred provider on or before the 45th day after the applicable statutory claims payment period, pay a penalty in the amount specified in subparagraphs (A) and (B) of this paragraph. The MCC must pay 50 percent of the penalty to the institutional preferred provider and 50 percent of the penalty to the Texas Health Insurance Pool until its dissolution, and after its dissolution to the department. The penalty under this paragraph on the amount not timely paid is in the amount of the lesser of:

- (A) 50 percent of the underpaid amount; or
- (B) \$100,000;

(5) if the balance of the claim is paid to an institutional preferred provider on or after the 46th day and before the 91st day after the end of the applicable statutory claims payment period, pay a penalty in

the amount specified in subparagraphs (A) and (B) of this paragraph. The MCC must pay 50 percent of the penalty to the institutional preferred provider and 50 percent of the penalty to the Texas Health Insurance Pool until its dissolution, and after its dissolution to the department. The penalty under this paragraph is in the amount of the lesser of:

- (A) 100 percent of the underpaid amount; or
- (B) \$200,000; and

(6) if the balance of the claim is paid to an institutional preferred provider on or after the 91st day after the end of the applicable statutory claims payment period, pay a penalty computed under paragraph (5) of this subsection plus 18 percent annual interest on the penalty amount. Interest under this subsection accrues beginning on the date the MCC was required to pay the claim and ending on the date the claim and the institutional provider's portion of the penalty are paid in full. The MCC must pay 50 percent of the interest to the institutional preferred provider and 50 percent of the interest to the Texas Health Insurance Pool until its dissolution, and after its dissolution to the department.

(d) For the purposes of subsection (c) of this section, the underpaid amount is calculated on the ratio of the balance owed by the MCC to the total contracted rate, including any patient financial responsibility, as applied to an amount equal to the billed charges minus the contracted rate. For example, a claim for a contracted rate to a noninstitutional preferred provider of \$1,000 and billed charges of \$1,500 is initially underpaid at \$600, with the insured owing \$200 and the MCC owing a balance of \$200. The MCC pays the \$200 balance on the 30th day after the end of the applicable statutory claims payment period. The amount the MCC initially underpaid, \$200, is 20 percent of the contracted rate. To determine the penalty, the MCC must calculate 20 percent of the billed charges minus the contracted rate, which is \$100. This amount represents the underpaid amount for subsection (c)(1) of this section. The MCC must pay, as a penalty, 50 percent of \$100, or \$50.

(e) For purposes of calculating a penalty when an MCC is a secondary plan MCC for a claim, the contracted rate and billed charges must be reduced in proportion to the percentage of the entire claim that is owed by the secondary plan MCC. The following example illustrates this method: Carrier A pays 80 percent of a claim to a noninstitutional preferred provider for a contracted rate of \$1,000 and billed charges of \$1,500, leaving \$200 unpaid as the patient's financial responsibility. The patient has coverage through Carrier B that is secondary, and Carrier B will owe the \$200 balance under the coordination of benefits provision of Carrier B's policy. If Carrier B fails to pay the \$200 within the applicable statutory claims payment period, Carrier B will pay a penalty based on the percentage of the claim that it owed. The contracted rate for Carrier B will be \$200 (20 percent of Carrier A's \$1,000 contracted rate), and the billed charges will be \$300 (20 percent of \$1,500). Although Carrier B may have a contracted rate with the provider that is different from Carrier A's contracted rate, it is Carrier A's contracted rate that establishes the entire claim amount for the purpose of calculating Carrier B's penalty.

(f) An MCC is not liable for a penalty under this section:

(1) if the failure to pay the claim within the applicable statutory claims payment period is a result of a catastrophic event that the MCC certified according to the provisions of §21.2819 of this title (relating to Catastrophic Event); or

(2) if the claim was paid in compliance with §21.2807 of this title, but for less than the contracted rate, and:

(A) the preferred provider notifies the MCC of the underpayment after the 270th day after the date the underpayment was received; and

(B) the MCC pays the balance of the claim on or before the 30th day after the date the insurer receives the notice of underpayment.

(g) Subsection (f) of this section does not relieve the MCC of the obligation to pay the remaining unpaid contracted rate owed the preferred provider.

(h) An MCC that pays a penalty under this section must clearly indicate on the explanation of payment the amount of the contracted rate paid, the amount of the billed charges as submitted by the physician or the provider, and the amount paid as a penalty. A nonelectronic explanation of payment complies with this requirement if it clearly and prominently identifies the notice of the penalty amount.

§21.2816. Date of Receipt.

(a) A written communication, including a claim, referenced under this subchapter is subject to and must comply with this section unless otherwise stated in this subchapter.

(b) An entity subject to these rules may deliver written communications as follows:

(1) submit the communication by United States mail, first class; by United States mail, return receipt requested; or by overnight delivery;

(2) submit the communication electronically and maintain proof of the electronically submitted communication;

(3) if the entity accepts facsimile transmissions for the type of communication being sent, fax the communication and maintain proof of facsimile transmission; or

(4) hand deliver the communication and maintain a copy of the signed receipt acknowledging the hand delivery.

(c) If a communication is submitted by United States mail, first class, the communication is presumed to have been received on the fifth day after the date the communication is submitted, or, if the communication is submitted using overnight delivery service or United States mail return receipt requested, on the date the delivery receipt is signed.

(d) If a communication other than a claim is submitted electronically, the communication is presumed received on the date of submission. Communications electronically submitted after the receiving entity's normal business hours are presumed received the following business day.

(e) If a claim is submitted electronically, the claim is presumed received on the date of the electronic verification of receipt by the MCC or the MCC's clearinghouse. If the MCC's clearinghouse does not provide a confirmation of receipt of the claim or a rejection of the claim within 24 hours of submission by the physician, or the provider, or the physician's or provider's clearinghouse, the physician's or provider's clearinghouse must provide the confirmation. The physician's or provider's clearinghouse must be able to verify that the claim contained the correct payor identification of the entity to receive the claim.

(f) If a communication is faxed, the communication is presumed to have been received on the date of the transmission acknowledgement. Communications faxed after the receiving entity's normal business hours are presumed received the following business day.

(g) If a communication is hand delivered, the communication is presumed to have been delivered on the date the delivery receipt is signed.

(h) Any entity submitting a communication under subsection (b)(1) - (4) of this section may choose to maintain a mail log to provide proof of submission and establish date of receipt. The entity must fax or electronically transmit a copy of the mail log, if used, to the receiving entity at the time of the submission of a communication and include another copy with the relevant communication. The log must identify each separate claim, request for information, or response included in a batch communication. The mail log must include the following information: name of claimant; address of claimant; telephone number of claimant; claimant's federal tax identification number; name of addressee; name of MCC; designated address; date of mailing or hand delivery; subscriber name; subscriber ID number; patient name; date(s) of service or occurrence; delivery method; and claim number, if applicable.

§21.2817. Terms of Contracts.

Unless otherwise provided in this subchapter, contracts between MCCs and preferred providers may not include terms that:

(1) extend the statutory or regulatory time frames; or

(2) waive the preferred provider's right to recover reasonable attorney's fees and court costs under Insurance Code §1301.108 and §843.343.

§21.2818. Overpayment of Claims.

(a) An MCC may recover a refund due to overpayment or completion of an audit if:

(1) the MCC notifies the physician or the provider of the overpayment not later than the 180th day after the date of receipt of the overpayment; or

(2) the MCC notifies the physician or the provider of the completion of an audit under §21.2809 of this title (relating to Audit Procedures).

(b) Notification under subsection (a) of this section must:

(1) be in written form and include the specific claims and amounts for which a refund is due, and for each claim, the basis and specific reasons for the request for refund;

(2) include notice of the physician's or provider's right to appeal; and

(3) describe the methods by which the MCC intends to recover the refund.

(c) A physician or a provider may appeal a request for refund by providing written notice of disagreement with the refund request not later than 45 days after receipt of notice described in subsection (a) of this section. On receipt of written notice under this subsection, the MCC must begin the appeal process provided for in the MCC's contract with the physician or the provider.

(d) An MCC may not recover a refund under this section until:

(1) for overpayments, the later of the 45th day after notification under subsection (a)(1) of this section or the exhaustion of any physician or provider appeal rights under subsection (c) of this section, where the physician or the provider has not made arrangements for payment with an MCC; or

(2) for audits, the later of the 30th day after notification under subsection (a)(2) of this section or the exhaustion of any physician or provider appeal rights under subsection (c) of this section, where the

physician or the provider has not made arrangements for payment with an MCC.

(e) If an MCC is a secondary payor and pays a portion of a claim that should have been paid by the MCC that is the primary payor, the secondary payor may only recover overpayment from the MCC that is primarily responsible for that amount. If the portion of the claim overpaid by the secondary payor was also paid by the primary payor, the secondary payor may recover the amount of overpayment from the physician or the provider that received the payment under the procedures set out in this section.

(f) Subsections (a) - (e) of this section do not affect an MCC's ability to recover an overpayment in the case of fraud or a material misrepresentation by a physician or a provider.

§21.2819. *Catastrophic Event.*

(a) An MCC, a physician, or a provider must notify the department if, due to a catastrophic event, it is unable to meet the deadlines in §21.2804 of this title (relating to Requests for Additional Information from Treating Preferred Provider), §21.2806 of this title (relating to Claim Filing Deadline), §21.2807 of this title (relating to Effect of Filing a Clean Claim), §21.2808 of this title (relating to Effect of Filing a Deficient Claim), §21.2809 of this title (relating to Audit Procedures), and §21.2815 of this title (relating to Failure to Meet the Statutory Claims Payment Period), as applicable. The entity must send the notification required under this subsection to the department within five days of the catastrophic event.

(b) Within 10 days after the entity returns to normal business operations, the entity must send a certification of the catastrophic event to the Life/Health and HMO Intake Team, Texas Department of Insurance, P.O. Box 149104, Mail Code 106-1E, Austin, Texas 78714-9104. The certification must:

(1) be in the form of a sworn affidavit from:

(A) for a physician or a provider, the physician, the provider, the office manager, the administrator, or their designees; or

(B) for an MCC, a corporate officer or a corporate officer's designee;

(2) identify the specific nature and date of the catastrophic event; and

(3) identify the length of time the catastrophic event caused an interruption in the claims submission or processing activities of the physician, the provider, or the MCC.

(c) A valid certification to the occurrence of a catastrophic event under this section tolls the applicable deadlines in §§21.2804, 21.2806, 21.2807, 21.2808, 21.2809, and 21.2815 of this title for the number of days identified in subsection (b)(3) of this section as of the date of the catastrophic event.

§21.2820. *Identification Cards.*

(a) An identification card, or other similar document that includes information necessary to allow enrollees and insureds to access services or coverage under an HMO evidence of coverage, a preferred provider benefit plan, or an exclusive provider benefit plan that is issued by an MCC subject to this subchapter must comply with the requirements of this section.

(b) An identification card or other similar document issued to enrollees or to insureds must include the following information:

(1) the name of the enrollee or the insured;

(2) the first date on which the enrollee or the insured became eligible for benefits under the plan or a toll-free number that a preferred provider may use to obtain such information;

(3) for an exclusive provider benefit plan, the acronym "EPO" or the phrase "Exclusive Provider Organization"; and

(4) the letters "TDI" or "DOI" prominently displayed on the front of the card or the document.

§21.2821. *Reporting Requirements.*

(a) An MCC must submit to the department quarterly claims payment information in compliance with the requirements of this section.

(b) The MCC must submit the report required by subsection (a) of this section to the department on or before:

(1) May 15th for the months of January, February, and March of each year;

(2) August 15th for the months of April, May, and June of each year;

(3) November 15th for the months of July, August, and September of each year; and

(4) February 15th for the months of October, November, and December of each preceding calendar year.

(c) The report required by subsection (a) of this section must include, at a minimum, the following information:

(1) number of claims received from noninstitutional preferred providers;

(2) number of claims received from institutional preferred providers;

(3) number of clean claims received from noninstitutional preferred providers;

(4) number of clean claims received from institutional preferred providers;

(5) number of clean claims from noninstitutional preferred providers paid within the applicable statutory claims payment period;

(6) number of clean claims from noninstitutional preferred providers paid on or before the 45th day after the end of the applicable statutory claims payment period;

(7) number of clean claims from institutional preferred providers paid on or before the 45th day after the end of the applicable statutory claims payment period;

(8) number of clean claims from noninstitutional preferred providers paid on or after the 46th day and before the 91st day after the end of the applicable statutory claims payment period;

(9) number of clean claims from institutional preferred providers paid on or after the 46th day and before the 91st day after the end of the applicable statutory claims payment period;

(10) number of clean claims from noninstitutional preferred providers paid on or after the 91st day after the end of the applicable statutory claims payment period;

(11) number of clean claims from institutional preferred providers paid on or after the 91st day after the end of the applicable statutory claims payment period;

(12) number of clean claims from institutional preferred providers paid within the applicable statutory claims payment period;

(13) number of claims paid under the provisions of §21.2809 of this title (relating to Audit Procedures);

(14) number of requests for verification received under §19.1719 of this title (relating to Verification for Health Maintenance Organizations and Preferred Provider Benefit Plans);

(15) number of verifications issued under §19.1719 of this title;

(16) number of declinations of requests for verifications, under §19.1719 of this title;

(17) number of certifications of catastrophic events sent to the department;

(18) number of calendar days business was interrupted for each corresponding catastrophic event;

(19) number of electronically submitted, affirmatively adjudicated pharmacy claims received by the MCC;

(20) number of electronically submitted, affirmatively adjudicated pharmacy claims paid within the 18-day statutory claims payment period;

(21) number of electronically submitted, affirmatively adjudicated pharmacy claims paid on or before the 45th day after the end of the 18-day statutory claims payment period;

(22) number of electronically submitted, affirmatively adjudicated pharmacy claims paid on or after the 46th day and before the 91st day after the end of the 18-day statutory claims payment period; and

(23) number of electronically submitted, affirmatively adjudicated pharmacy claims paid on or after the 91st day after the end of the 18-day statutory claims payment period.

(d) An MCC must annually submit to the department, on or before August 15th, at a minimum, information related to the number of declinations of requests for verifications from July 1st of the prior year to June 30th of the current year, in the following categories:

(1) policy or contract limitations:

(A) premium payment time frames that prevent verifying eligibility for a 30-day period;

(B) policy deductible, specific benefit limitations, or annual benefit maximum;

(C) benefit exclusions;

(D) no coverage or change in membership eligibility, including individuals not eligible, not yet effective, or for whom membership is canceled;

(E) preexisting condition limitations; and

(F) other;

(2) declinations due to an inability to obtain necessary information to verify requested services from the following persons:

(A) the requesting physician or provider;

(B) any other physician or provider; and

(C) any other person.

§21.2822. *Administrative Penalties.*

(a) An MCC that fails to comply with §21.2807 of this title (relating to Effect of Filing a Clean Claim) for more than 2 percent of clean claims submitted to the MCC is subject to an administrative

penalty under Insurance Code §843.342(k) or §1301.137(k), as applicable.

(b) The percentage of the MCC's compliance with §21.2807 of this title must be determined on a quarterly basis and must be separated into a compliance percentage for noninstitutional preferred provider claims and institutional preferred provider claims. Claims paid in compliance with §21.2809 of this title (relating to Audit Procedures) are not included in calculating the compliance percentage under this section.

§21.2823. *Applicability to Certain Noncontracting Physicians and Providers.*

The provisions of §19.1719 of this title (relating to Verification for Health Maintenance Organizations and Preferred Provider Benefit Plans) and §21.2807 of this title (relating to Effect of Filing a Clean Claim) apply to a physician or a provider that provides to an enrollee or an insured of an MCC:

(1) care related to an emergency or its attendant episode of care as required by state or federal law; or

(2) specialty or other medical care or health care services at the request of the MCC, the physician, or the provider because the services are not reasonably available from a physician or a provider who is included in the MCC's network.

§21.2824. *Applicability.*

The amendments to §§21.2801 - 21.2803, 21.2807 - 21.2809, and 21.2811 - 21.2817 of this title (relating to Scope, Definitions, Elements of a Clean Claim, Effect of Filing a Clean Claim, Effect of Filing Deficient Claim, Audit Procedures, Disclosure of Processing Procedures, Denial of Clean Claim Prohibited for Change of Address, Requirements Applicable to Other Contracting Entities, Electronic Adjudication of Prescription Benefits, Failure to Meet the Statutory Claims Payment Period, Date of Receipt, and Terms of Contracts), and new §§21.2804 - 21.2806, 21.2818, 21.2819, and 21.2821 - 21.2825 of this title (relating to Requests for Additional Information from Treating Preferred Provider, Requests for Additional Information from Other Sources, Claims Filing Deadline, Overpayment of Claims, Catastrophic Event, Reporting Requirements, Administrative Penalties, Applicability to Certain Non-Contracting Physicians and Providers, Applicability, and Severability) apply to services provided, or inpatient services beginning, under contracts entered into or renewed between an MCC and a preferred provider after October 4, 2003, and to services provided or hospital confinements beginning after October 4, 2003, by physicians and providers that do not have a contract with an MCC.

§21.2825. *Severability.*

If a court of competent jurisdiction holds that any provision of this subchapter or its application to any person or circumstance is invalid for any reason, the invalidity does not affect other provisions or applications of this subchapter that can be given effect without the invalid provision or application, and to this end the provisions of this subchapter are severable.

§21.2826. *Waiver.*

In compliance with Insurance Code §1211.001, the provisions in Insurance Code Chapter 1301, §1301.069, §1301.162, and Subchapters C and C-1; Chapter 1213; Chapter 843, §843.209, §843.319, and Subchapter J; as well as this subchapter and §§3.3703(a)(20), 11.901(a)(11), 19.1718, and 19.1719 of this title (relating to Contracting Requirements, Required Provisions, Preauthorization for Health Maintenance Organizations and Preferred Provider Benefit Plans, and Verification for Health Maintenance Organizations and Preferred Provider Benefit Plans, respectively) are not applicable to Medicaid

and Children's Health Insurance Program plans provided by an MCC to persons enrolled in the medical assistance program established under Human Resources Code Chapter 32 or the child health plan established under Health and Safety Code Chapter 62.

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

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Texas Department of Insurance

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For further information, please call: (512) 463-6327



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE SUBCHAPTER D. EDUCATION

31 TAC §51.81

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 7, 2013, adopted an amendment to §51.81, concerning Mandatory Boater Education, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6864).

The 83rd Texas Legislature enacted House Bill (H.B.) 597, which amended Parks and Wildlife Code, Chapter 31 (commonly referred to as the Texas Water Safety Act) by adding §31.108(a-1), which requires a boater education course or equivalency examination to include information on how to prevent the spread of exotic, harmful, or potentially harmful aquatic plants, fish, and shellfish, including department-approved methods for cleaning boats, boat motors, fishing and other equipment, and boat trailers.

Under Parks and Wildlife Code, §31.109, all boat operators born after September 1, 1993, are required to successfully complete an approved boater education course before operating certain vessels (vessels powered by a motor of more than 15 horsepower; windblown vessels of over 14 feet in length, and personal watercraft) on public waters. Under department rules (31 TAC §51.81) a boater education course or equivalency examination shall consist of boats (uses, capacities, trailers, equipment, numbering, and titling), boating safety (accident causes, prevention, and emergency procedures), boating operation (preparation, float plans, navigation rules, navigation aids, local hazards, and weather), and state laws (Texas Water Safety Act, Boating While Intoxicated (BWI) Laws, violation prevention, and basic boating responsibilities). The amendment adds the provisions required by H.B. 597.

The amendment will function by ensuring that boater education instruction includes information on how to prevent the spread of exotic, harmful, or potentially harmful aquatic plants, fish, and shellfish.

The department received no comments opposing adoption of the proposed amendment.

The department received 10 comments supporting adoption of the proposed amendment.

No groups or associations supported or opposed adoption of the proposed amendment.

The amendment is adopted under the authority of Parks and Wildlife Code, §31.108, which requires the commission to adopt rules to administer a boater education program.

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

Filed with the Office of the Secretary of State on January 27, 2014.

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Ann Bright

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



SUBCHAPTER J. CONTRACT DISPUTE RESOLUTION

31 TAC §51.200

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 7, 2013, adopted an amendment to §51.200, concerning Applicability, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6865).

The amendment adds contracts described in Civil Practice and Remedies Code, Chapter 114, to the list of the types of contracts to which the provisions of the department's rules in Chapter 51, Subchapter J, do not apply.

Government Code, Chapter 2260 sets out the procedure for handling certain contract claims against the state. The department's rules in Chapter 51, Subchapter J, set out the procedure for handling claims against the department asserted under Government Code, Chapter 2260. The 83rd Texas Legislature (Regular Session) enacted House Bill (H.B.) 586, which amended the Civil Practice and Remedies Code by adding Chapter 114 to address certain design and construction claims arising under written contracts with state agencies. Under the provisions of H.B. 586, "a claim for breach of a written contract for engineering, architectural, or construction services or for materials related to engineering, architectural, or construction services brought by a party to the written contract, in which the amount in controversy is not less than \$250,000, excluding penalties, costs, expenses, prejudgment interest, and attorney's fees" that arises under a contract executed on or after September 1, 2013, is subject to the provisions of new Civil Practice and Remedies Code, Chap-

ter 114, as added by H.B. 586, rather than Government Code, Chapter 2260. Therefore, it is necessary to amend the department's rules to exclude such contract claims from the department's rule implementing Government Code, Chapter 2260.

Under the department's current rule, eight categories of contract types are exempted from the provisions of Chapter 51, Subchapter J. The amendment adds contracts described in Civil Practice and Remedies Code, Chapter 114, to the list.

The amendment will function by updating the department's regulations to reflect statutory changes.

The department received no comments concerning adoption of the proposed amendment.

The amendment is adopted under the authority of Government Code, §2260.052(c), which requires each unit of state government with rulemaking authority to develop rules to govern the negotiation and mediation of contract claims against the state, and Parks and Wildlife Code, §11.0171, which requires the commission to adopt by rule policies and procedures for soliciting and awarding contracts.

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

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SUBCHAPTER O. ADVISORY COMMITTEES DIVISION 5. STATE PARKS

31 TAC §51.642

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 7, 2013, adopted an amendment to §51.642, concerning San Jacinto Historical Advisory Board (SJHAB), without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6866).

The amendment implements the provisions of House Bill 3163, enacted by the 83rd Texas Legislature (Regular Session), which amended Parks and Wildlife Code, §22.012, to rename the Battleship Texas Commission the Battleship Texas Foundation. The amendment also corrects a typographical error.

The amendment will function by ensuring that the agency's regulations contain accurate terminology.

The department received no comments concerning adoption of the proposed amendment.

The amendment is adopted under the authority of Government Code, Chapter 2110, which requires that rules be adopted regarding each state agency advisory committee.

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

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CHAPTER 53. FINANCE SUBCHAPTER E. DISPLAY OF BOAT REGISTRATION

31 TAC §53.90, §53.91

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 7, 2013, adopted amendments to §53.90, concerning Display of Registration Validation Sticker, and §53.91, concerning Documented Vessels, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6870).

The amendments implement statutory changes enacted by the 83rd Texas Legislature (Regular Session) and make additional changes for purposes of grammatical sense.

Under Parks and Wildlife Code, §31.021, each vessel on the water of the state is required to be numbered unless specifically exempted. Under Parks and Wildlife Code, §31.032, the department is authorized to prescribe the manner in which identification numbers and validation decals are placed on a vessel. The provisions of current §53.90 require vessel registration numbers to be displayed on the bow of a vessel.

House Bill 115 (H.B. 115), enacted by the 83rd Texas Legislature (Regular Session), amended Parks and Wildlife Code, §31.021, to require vessel registration numbers to be displayed anywhere on the forward half of the vessel, provided for alternative display of registration numbers for vessels whose hull or superstructure architecture creates visibility issues with respect to registration identification, and replaced the word "validation" with the word "registration."

The amendment to §53.90 replaces references to the bow of a vessel with references to the forward half of a vessel, removes the word "validation" wherever it occurs, and replaces the word "sticker" with the word "decal," which is the term used in the statute. The amendment also restructures the section in the interest of clarity and readability. As currently written, the grammatical sense of the rule places the onus of regulatory compliance on the vessel, which is an inanimate object. The amendment would reword the section so that it is clear that the section applies to persons operating vessels.

The amendment to §53.91 removes the word "validation" wherever it occurs and re-words the section for grammatical sense for reasons set forth in the discussion of the amendment to §53.90.

The rules will function by prescribing the conventions for the placement of registration decals on vessels on the public water of the state.

The department received no comments opposing adoption of the proposed rules. No changes were made as a result of the comment.

The department received one comment supporting adoption of the proposed rules.

No groups or associations commented for or against adoption of the proposed rules.

The amendments are adopted under Parks and Wildlife Code, §31.032, which authorizes the department to prescribe the manner in which identification numbers and validation decals are placed on a vessel.

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

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Ann Bright

General Counsel

Texas Parks and Wildlife Department

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CHAPTER 59. PARKS SUBCHAPTER J. OFF-HIGHWAY VEHICLE TRAIL AND RECREATIONAL AREA PROGRAM

31 TAC §59.231

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 7, 2013, adopted an amendment to §59.231, concerning the Off-Highway Vehicle Trail and Recreational Area Program, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6873).

The amendment corrects an inaccurate reference to the Transportation Code in subsection (a). The amendment is a result of the passage of House Bill 1044 and Senate Bill 487 by the 83rd Texas Legislature (Regular Session), which amended Parks and Wildlife Code, §29.001, relating to the operation of all-terrain vehicles and recreational off-highway vehicles. The amendment amends §59.231 to refer to the definition of "motorcycle" in Transportation Code, §502.001.

The rule will function by ensuring accurate cross-references to other law.

The department received no comments concerning adoption of the proposed amendment.

The amendment is adopted under Parks and Wildlife Code, §29.010, which authorizes the commission to adopt rules nec-

essary to implement the provisions of Parks and Wildlife Code, Chapter 29.

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

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Ann Bright

General Counsel

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CHAPTER 65. WILDLIFE SUBCHAPTER C. PERMITS FOR TRAPPING, TRANSPORTING, AND TRANSPLANTING GAME ANIMALS AND GAME BIRDS

31 TAC §65.119

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 7, 2013, adopted an amendment to §65.119, concerning Penalties, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6874).

Parks and Wildlife Code, Chapter 43, Subchapter E, authorizes the department to issue permits to trap, transport, and transplant game animals and game birds, urban white-tailed deer removal permits, and permits to trap and transport surplus white-tailed deer. Prior to September 1, 2013, Parks and Wildlife Code, §43.062, mandated that any violation of Subchapter E or a permit issued under Subchapter E constituted a Class B Parks and Wildlife Code misdemeanor. The 83rd Texas Legislature (Regular Session) enacted Senate Bill (S.B.) 1342 and House Bill (H.B.) 2649, which amended Parks and Wildlife Code, §43.062, to provide that a violation of a rule relating to a reporting requirement for a permit issued under Subchapter E or a term of a permit issued under Subchapter E is a Class C Parks and Wildlife Code misdemeanor.

The amendment will function by specifying the punishments prescribed for a Class C Parks and Wildlife Code misdemeanor.

The department received no comments concerning adoption of the proposed amendment.

No groups or association commented for or against adoption of the proposed amendment.

The amendment is adopted under Parks and Wildlife Code, §§43.061(f), 43.0661(c), and 43.062(k), which authorizes the commission to promulgate rules necessary to implement the provisions of Chapter 43, Subchapter E.

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

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Ann Bright

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Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 358. STATE WATER PLANNING GUIDELINES

SUBCHAPTER B. DATA COLLECTION

31 TAC §358.6

The Texas Water Development Board ("TWDB" or "Board") adopts amendments to 31 TAC §358.6, concerning Water Loss Audits, with minor non-substantive changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7621).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT

In 2013, the 83rd Texas Legislature passed House Bill (HB) 857, amending Texas Water Code §16.0121, effective September 1, 2013, regarding the water loss audit that is required of all retail public utilities providing potable water. Prior to HB 857, annual water loss audits were required only for those utilities that were receiving financial assistance from the TWDB. All other utilities were required to perform a water loss audit every five years. Following the passage of HB 857, all such utilities are required to perform and file with the TWDB a water loss audit annually, with the exception that those utilities that are providing service to 3,300 or fewer connections and are not receiving financial assistance from the TWDB are required to perform and file with the TWDB a water loss audit every five years. The first annual water loss audit must be submitted to the TWDB by May 1, 2014.

DISCUSSION OF ADOPTED AMENDMENTS

The amendments to subsection (a) specify that the water loss audit shall be performed for the preceding calendar year unless a different 12-month period is allowed by the Executive Administrator. Most utilities perform their water loss audits on a calendar year basis, as this provides ample time to complete the water loss audit and file it by May 1. The intent of this rule amendment is to allow a utility to use a different 12-month period if it has a legitimate reason for doing so.

Subsection (a) is adopted with a minor non-substantive revision to remove an extra space after "calendar year."

The amendments delete subsection (a)(2) and (3) and add new subsection (a)(1) and (2). New subsection (a)(1) specifies which utilities are required to file annual water loss audits and sets a due date of May 1st each year. New subsection (a)(1) is adopted with a minor non-substantive change from "May 1" in the proposed text to "May 1st." New subsection (a)(2) specifies which

utilities are required to file water loss audits every five years and sets a due date of May 1, 2016, and every five years thereafter by May 1st, consistent with the five-year schedule starting in 2006 that was established by the TWDB under Texas Water Code §16.0121. New subsection (a)(2) is adopted without changes to the proposed text.

The amendments renumber subsection (a)(1) to subsection (a)(3) and amend the text to remove the requirement that the Executive Administrator provide the necessary forms and methodologies at least one year prior to the required filing via first class mail or electronic mail, because the forms and methodologies are available on the TWDB's website and the vast majority of utilities currently file their water loss audits electronically. Subsection (a)(3) is adopted without changes to the proposed text.

The amendments to subsection (b) allow the Executive Administrator more flexibility to provide a timeframe within which a utility must correct deficiencies in its water loss audit so that it can be eligible for financial assistance from the TWDB for water supply projects. Prior to the amendments, subsection (b) required the Executive Administrator to return an incomplete water loss audit, and the utility had 30 days to correct any deficiencies. The amendment changed the requirement to only require the Executive Administrator to notify the utility of the deficiencies, and the utility must correct those deficiencies in the timeframe provided by the Executive Administrator. The amendments to subsection (b) are adopted without changes to the proposed text.

PUBLIC COMMENT

The Texas Water Development Board did not receive any comments regarding the proposed amendments.

STATUTORY AUTHORITY

The amendments are adopted under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB; and Texas Water Code §16.0121, which requires the TWDB to develop appropriate methodologies and submission dates for a water loss audit required under that statute.

The adopted amendments implement Texas Water Code §16.0121.

§358.6. *Water Loss Audits.*

(a) In accordance with Texas Water Code §16.0121, a retail public utility, as defined by Texas Water Code §13.002, that provides potable water shall perform a water loss audit and file with the executive administrator a water loss audit computing the utility's system water loss during the preceding calendar year, unless a different 12-month period is allowed by the executive administrator. The water loss audit may be submitted electronically.

(1) Audit required annually. The utility must file the water loss audit with the executive administrator annually by May 1st if the utility:

(A) has greater than 3,300 connections; or

(B) is receiving financial assistance from the board, regardless of the number of connections. A retail public utility is receiving financial assistance from the board if it has an outstanding loan, loan forgiveness agreement, or grant agreement from the board.

(2) Audit required every five years. The utility must file the water loss audit with the executive administrator by May 1, 2016, and

every five years thereafter by May 1st if the utility has 3,300 or fewer connections and is not receiving financial assistance from the board.

(3) The water loss audit shall be performed in accordance with methodologies developed by the executive administrator based on the population served by the utility and taking into consideration the financial feasibility of performing the water loss audit, population density in the service area, the retail public utility's source of water supply, the mean income of the service population, and any other factors determined by the executive administrator. The executive administrator will provide the necessary forms and methodologies to the retail public utility.

(4) The executive administrator shall compile the information included in the water loss audits according to category of retail public utility and according to regional water planning area.

(b) The executive administrator shall determine if the water loss audit is administratively complete. A water loss audit is administratively complete if all required responses are provided. In the event the executive administrator determines that a retail public utility's water loss audit is incomplete, the executive administrator shall notify the utility. A retail public utility that provides potable water that fails to submit a water loss audit or that fails to correct a water loss audit that is not administratively complete within the timeframe provided by the executive administrator is ineligible for financial assistance for water supply projects under Texas Water Code, Chapter 15, Subchapters C, D, E, F, J, O, Q, and R; Chapter 16, Subchapters E and F; and Chapter 17, Subchapters D, I, K, and L. The retail public utility will remain ineligible for financial assistance until a complete water loss audit has been filed with and accepted by the executive administrator.

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

Filed with the Office of the Secretary of State on January 23, 2014.

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Les Trobman

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-8061



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.313

The Comptroller of Public Accounts adopts an amendment to §3.313, concerning cable television service, with changes to the proposed text as published in the July 26, 2013, issue of the *Texas Register* (38 TexReg 4699). In recent years, technological advances have changed the nature of cable television service. Cable service providers no longer rely exclusively upon coaxial

cable systems to deliver content to subscribers' televisions, instead delivering content through a variety of means to a variety of devices, including mobile devices. In addition, cable television has changed. Cable service providers now offer their customers a wide range of fixed programming options, including high definition and digital channels, as well as on-demand, pay-per-view, and streaming content. Many cable service providers also provide services in addition to cable television service, such as Internet access, telephone, and home security services. Finally, cable service providers have changed their billing practices, often offering cable television service together with other taxable services in a "bundle," meaning that all of the services are provided for a single monthly charge. The amendment to §3.313 is intended to clarify the application of existing tax law and policy to the provision of cable television and related services as those services, and the means of providing them, continue to evolve.

The title of §3.313 is changed from "Cable Television Service," to "Cable Television Service and Bundled Cable Service." This title amendment reflects the changes in the cable service industry described above.

Subsection (a) is amended and reformatted with paragraphs (1) - (7). Paragraphs (1) and (2) are added to define the new terms "bundled cable service" and "cable service provider." Paragraph (3) is added to provide a definition of the term "cable system," which is not defined in the Tax Code, and which was not previously defined by administrative rule. The new definition, which will apply for purposes of this section only, is intentionally broader than the definition of the term used by the Federal Communications Commission.

Paragraph (4) clarifies the definition of "cable television service" in former subsection (a). Tax Code, §151.0033 defines cable television service as "the distribution of video programming with or without use of wires to subscribing or paying customers." Pursuant to Tax Code, §151.0101, the comptroller has exclusive jurisdiction to interpret that definition. By amending former subsection (a), the comptroller intends to make clear that the term "cable television service" encompasses all forms of video programming, including streaming video, whether provided via the Internet or other technology. It is the comptroller's intent that the definition in paragraph (4), together with the new definitions of bundled cable service, cable service provider, and cable system in paragraphs (1) - (3), will streamline the application of state and local sales tax to all video programming and to all services sold in a bundle with video programming, thereby simplifying cable service providers' tax collection responsibilities.

Comments regarding the proposed definition of "cable television service" were received from Todd A. Lard of Sutherland Asbill & Brennan, LLP, on behalf of the Texas Cable Association and other clients. Mr. Lard recommended that alternatives to the definition of "cable television service" be considered to anticipate changes in technology, and to differentiate between the provision of a service, the sale of tangible personal property, and the sale of the functional equivalent of tangible personal property. Mr. Lard's comments will be considered for future amendments to the section; however, the comptroller declines to make a change to the definition at this time.

Paragraphs (5) and (6) are added to subsection (a) to define the new terms "fixed physical connection" and "nomadic access," respectively. In his comments, Mr. Lard also expressed concern that the proposed definition of the term "fixed physical location" did not include locations where a purchaser self-installs "materials or equipment that connect the purchaser to the provider's

cable system." In response to this concern, the comptroller has revised the definition of "fixed physical location" in subsection (a)(5) to state that the term applies in the context of equipment installed by the customer with the agreement of the cable service provider.

Finally, new subsection (a)(7) is adopted to define the term "point of delivery," which was previously undefined in this section. These definitions are intended to give effect to Tax Code, §321.203(j) and §323.203(j), which are addressed in greater detail below in the discussion of the revisions to subsection (g), concerning local tax, and to give cable service providers additional guidance about the sourcing of sales of cable services for local sales tax purposes.

Amendments are made to subsection (b), concerning the imposition of tax. The term "bundled cable service" is added to the body of the main paragraph to make clear that bundled cable service will be taxed in the same manner and to the same extent as cable television service.

Comments received from Mr. Lard, on behalf of the Texas Cable Association and other clients, expressed concern that the proposed revisions to subsection (b) of the rule were unclear regarding whether nontaxable services are subject to tax if included as a component of "bundled cable service." In response to this concern, the body of the subsection is divided into subsection (b)(1) and (2). New subsection (b)(2), concerning unrelated services, addresses the apportionment of nontaxable unrelated services and taxable services sold or purchased for a single charge.

Paragraphs (1) - (6) of subsection (b) are relettered as subsection (b)(1)(A) - (F). To improve the relevance of this subsection to today's marketplace, the term "digital video recorder" is added to subsection (b)(1)(C), formerly (b)(3), and the reference to the sale of FM radio service in subsection (b)(1)(F), formerly (b)(6), is deleted. In both subsection (b)(1)(C), formerly (b)(3), and subsection (b)(1)(D), formerly (b)(4), the term "purchaser" is substituted for the term "customer." This substitution, which is intended to improve the clarity of this section, is made in several places throughout the section.

Minor amendments are made to subsection (c), concerning the taxability of deposits. The amendments incorporate references to bundled cable service and state more precisely that a deposit for equipment is not taxable when it is made by a purchaser who is taking possession of tangible personal property that is necessary to access the cable television or bundled cable service.

Subsection (d)(1) is reorganized and expanded to improve the clarity and accuracy of this section. New subparagraph (A) addresses the tax-exempt purchase of taxable services that will be transferred directly to a purchaser as an integral part of a cable television or bundled cable service. This exemption, created by Tax Code, §151.151, was not directly addressed in the current version of the section. In addition, the contents of former subsection (d)(1) are moved to new subparagraph (B), which addresses the purchase of services that are performed on exempt tangible personal property. In this new subparagraph, which implements Tax Code, §151.3111, the comptroller proposed using the term "digital video recorder" in place of the term "converter" to reflect changes in the marketplace. In response to comments received from Seth A. Kaufman, General Attorney-Tax, AT&T Management Services, LP, on behalf of AT&T, and Mr. Lard, on behalf of the Texas Cable Association and other clients, the comptroller has included the term "digital video recorder" in addition to the term "converter" as another example of an item for which

repair services may be purchased for resale by a cable service provider.

Amendments to improve clarity and readability are also made to subsection (d)(2) and subsections (e) and (f). No substantive changes to policy are intended as a result of these amendments.

In comments filed on behalf of the Texas Cable Association and other clients, Mr. Lard recommended that subsection (e) of this rule be coordinated with the refund provisions provided in new Tax Code, §151.3186, which was enacted by the 83rd Legislature in 2013. In response to Mr. Lard's comment, new subsection (e)(3) is added to refer readers to §3.345 of this title (relating to Annual Refund Program for Providers of Cable Television, Internet Access, and Telecommunications Services) for information about annual refunds available on certain equipment used by cable television service providers.

Finally, subsection (g), concerning local tax, is amended and reformatted with paragraphs (1) - (7). Paragraph (1) explains that local tax is due on the sale of cable television and bundled cable service based upon the point of delivery to the purchaser. New paragraph (2) restates the local sales tax exemption created by federal law for direct-to-satellite service providers, which is currently set out in subsection (g). This new paragraph also explains that a bundled cable service provided by means of a direct-to-satellite connection is taxed in the same manner as cable television service provided through such a connection.

Subsection (g)(3) explains how the point of delivery of a cable television or bundled cable service is determined. The primary goal of subsection (g)(3) is to give effect to Tax Code, §321.203(j) and §323.203(j). The legislature first enacted these provisions (which originally applied to sales of "cable television service") in 1987. The Bill Analysis prepared by the House Committee on Ways and Means stated that these statutory amendments would "define the point of sale for cable television services as the point at which the consumer receives the service, so that consumers would pay local sales tax to the city in which they live." See House Bill 133, 70th Legislature, 1987. The Bill Analysis acknowledged that, absent such a specific sourcing provision, a purchaser of taxable cable service would pay local tax to the "foreign" jurisdiction from which the cable service originated, not to the local jurisdiction in which the purchaser lived. In 2003, the legislature amended the provisions of the Tax Code to state "that the sale of services delivered via cable systems is consummated at the point of delivery to the consumer."

In 1987, the terms "point of delivery" and "point at which the consumer receives the service" would have been synonymous and clearly understood. At the time, all cable services were provided over coaxial cable. Advances in technology, however, have made the terms ambiguous. The definition in subsection (a)(7), together with the sourcing rules provided in subsection (g)(3), is intended to resolve this ambiguity and create a clear, administratively feasible rule that will adhere to the legislative intent behind "point of delivery." This policy change is prospective from the effective date of the adoption of the amendment to the section in accordance with Tax Code, §151.022.

Subsection (g)(3)(A) provides that when an account is associated with a fixed physical connection, the address of that physical connection shall be the point of delivery, even if the purchaser also has the option of nomadic access. Subsection (g)(3)(B) provides that if there is no fixed physical connection, and the cable television or bundled cable service is provided by an entity that is also a mobile telecommunications service provider, then the

point of delivery shall be the place of primary use of the purchaser's mobile device. Subsection (g)(3)(C), which applies only when subparagraphs (A) and (B) do not, states that the point of delivery shall be either the mailing address of the purchaser or the billing address associated with the purchaser's payment instrument, if the cable service provider maintains either address in its books and records. A purchaser may voluntarily provide its mailing address in this state to a cable service provider, even if the provider does not request that address, in order to ensure that the provider only collects from the purchaser those local taxes that are actually due.

The proposed amendments to this section provided, in subsection (g)(3)(C)(iii), that if the cable service provider does not and cannot deliver any services to the purchaser by means of a fixed physical connection, is not a mobile telecommunications service provider, and does not maintain an address for the purchaser in its books and records, and if the purchaser has not otherwise provided its Texas mailing address to the provider, then the provider shall use as the point of delivery the address, "Unspecified Jurisdiction, Texas."

Comments were received from Mr. Kaufman, on behalf of AT&T, from Dale Craymer, President, Texas Taxpayers and Research Association (TTARA), on behalf of the association, and from Bob Scott, Assistant City Manager and Chief Financial Officer, City of Carrollton, expressing concern about the new proposed subsection and requesting clarification of certain provisions. Based on those comments, the comptroller has decided to delete proposed subsection (g)(3)(C)(iii) from this version of the section.

New subsection (g)(4) outlines a purchaser's rights and remedies in the event that a cable service provider relies upon an inaccurate point of delivery when calculating the purchaser's local sales tax. As explained in subsection (g)(4)(A), a purchaser who does not have a fixed physical connection, and who is not receiving service from a cable service provider who is also a provider of mobile telecommunications services, may contact his or her cable service provider to provide or update the mailing address that will be considered to be the point of delivery to the purchaser. A cable service provider who accepts a purchaser's statement regarding the place of delivery in good faith will not be held liable for any additional tax, penalty, or interest if the comptroller subsequently determines that the statement is invalid. In addition, subsection (g)(4)(B) outlines how a purchaser may obtain a refund of local sales tax if a cable service provider collects and remits local tax in error.

New subsection (g)(5) explains that the hierarchy outlined in subsection (g)(3) also applies when determining the point of delivery of cable services provided by means of nomadic access.

Subsection (g)(6) and (7) explain that the point of sale of taxable items other than cable television or bundled cable service is determined based upon the generally applicable provisions of Tax Code, §321.203 and §323.203, not §321.203(j) and §323.203(j). These paragraphs reflect longstanding agency policy regarding sourcing for local sales tax purposes.

Comments received from Mr. Lard, on behalf of the Texas Cable Association and other clients, recommended that the comptroller should rewrite subsection (g) to source Internet Access Services sold by a cable service provider in the same manner as cable television or bundled cable service. After careful review, the comptroller has determined that this suggestion conflicts with Tax Code, §321.203 and §323.203, for the reasons explained

above. Consequently, no amendment is made to the section in response to this comment.

Comments received from Mr. Lard and Mr. Kaufman, on behalf of AT&T, also suggested that language be added to the section to confirm that the exemption provided under Tax Code, §151.325 for the first \$25.00 of a monthly charge for Internet Access Service applies when cable television service and Internet Access Service are offered as a "bundled cable service." After careful consideration, the comptroller has determined that the \$25 exemption for Internet Access Services provided as part of a bundled service is adequately addressed in §3.366 of this title (relating to Internet Access Services), and need not be addressed in this section. Mr. Lard also recommended that the proposed section language be amended to make clear that the section will not affect unbundling rules for telecommunications services or partial exemptions for certain services, such as data processing, which may be provided as part of bundled cable services. Because the comptroller has determined that the bundling rules for Telecommunications and Internet access services are addressed in §3.344 of this title (relating to Telecommunications Services), no amendment is made in response to this comment. In addition, partial exemptions for specific services will be addressed in the sections of this title that are specific to those services.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendments implement Tax Code, §§151.0033, 151.0101, 151.025, 321.003, 321.203, 323.003, and 323.203.

§3.313. *Cable Television Service and Bundle Cable Service.*

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

(1) Bundled cable service--The provision of cable television service and at least one other taxable service by a cable service provider through a cable system for a single price. Other taxable services may include, but are not limited to, telecommunications services, as defined in §3.344 of this title (relating to Telecommunications Services); Internet access services, as defined in §3.366 of this title (relating to Internet Access Services); data processing services, as defined in §3.330 of this title (relating to Data Processing Services); information services, as defined in §3.342 of this title (relating to Information Services); and security services, as defined in §3.333 of this title (relating to Security Services). Services sold to a purchaser by a third party, rather than the cable service provider, are not bundled cable services even if they are provided by means of a cable system.

(2) Cable service provider--A person who provides cable television service or bundled cable service through a cable system.

(3) Cable system--The system through which a cable service provider delivers cable television or bundled cable service. A cable system may comprise any or all of the following: tangible personal property; real property; and other media, such as radio waves, microwaves, or any other means of conveyance now in existence or that may be developed.

(4) Cable television service--The digital distribution of video programming to purchasers by any means now in existence or that may be developed. The term includes, but is not limited to, direct broadcast satellite service (DBS); subscription television service (STV); satellite master antenna television service (SMATV);

master antenna television service (MATV); multipoint distribution service (MDS); multichannel multipoint distribution service (MMDS); fixed programming; any audio portion of a video program; streaming video programming provided via the Internet or other technology, regardless of the type of device used by the purchaser to receive the service; video on demand services or subscription services that allow purchasers to choose from a library of available content; and any other video programming provided in exchange for consideration. The term does not include the provision of tangible personal property, such as video content that has been downloaded by the purchaser or is stored on a compact disc or other physical media, or the provision of telecommunications services, as defined in §3.344 of this title.

(5) Fixed physical connection--The place at a purchaser's residence or business where the cable service provider or its agent, or the purchaser, by agreement with the cable service provider, has installed any materials or equipment that connect the purchaser to the provider's cable system. For example, a coaxial cable connection at a distribution box or an outdoor antenna or dish that connects to a satellite receiver is a fixed physical connection. The connection of equipment, such as a personal computer, Internet-ready television, or other device that allows the purchaser to view content that is not provided directly by the cable service provider, does not create a fixed physical connection.

(6) Nomadic access--The ability to access cable television service or bundled cable service from multiple locations with or without the use of a fixed physical connection.

(7) Point of delivery--The physical address of the purchaser's fixed physical connection or, in the absence of such connection, the physical address of the purchaser at which the cable television or bundled cable service is considered to be received, as determined in subsection (g)(3) of this section.

(b) Imposition of tax. The sale of cable television or bundled cable service, and any services or expenses connected to the provision of the service, are subject to sales and use tax.

(1) Taxable charges include:

(A) service connection fees. The term "service connection fee" includes terms such as "installation," "connect," or "reconnect;"

(B) charges for video programming services;

(C) charges for tangible personal property, such as converters, descramblers, and digital video recorders, transferred to the care, custody, and control of purchasers as an integral part of the services provided;

(D) amounts billed to purchasers for repairs or maintenance;

(E) municipal franchise fees; and

(F) any licensing fees for the right to receive or distribute a satellite signal.

(2) Unrelated services.

(A) A service will be considered as unrelated if:

(i) it is not a cable television service or bundled cable service, nor a service taxed under other provisions of Tax Code, Chapter 151;

(ii) it is of a type which is commonly provided on a stand-alone basis; and

(iii) the performance of the service is distinct and identifiable.

(B) Where nontaxable unrelated services and taxable services are sold or purchased for a single charge and the portion relating to taxable services represents more than 5.0% of the total charge, the total charge is presumed to be taxable. The presumption may be overcome by the taxable service provider at the time the transaction occurs by separately stating to the purchaser a reasonable charge for the taxable services. If the charge for the taxable portion of the services is not separately stated at the time of the transaction, the service provider or the purchaser may later establish for the comptroller, through documentary evidence, the percentage of the total charge that relates to nontaxable unrelated services. The service provider's books must support the apportionment between exempt and nonexempt activities based on the cost of providing the service or on a comparison to the normal charge for each service if provided alone. If the charge for exempt services is unreasonable when the overall transaction is reviewed considering the cost of providing the service or a comparable charge made in the industry for each service, the comptroller will adjust the charges and assess additional tax, penalty, and interest on the taxable services.

(c) Deposits. A deposit that represents future payment for cable television or bundled cable service is part of the sales price of the service and is taxable when the deposit is used to pay for the service. A deposit paid to receive equipment that is transferred to the care, custody, and control of the purchaser as an integral part of the service, such as a converter that is returned to the cable service provider when the service is terminated, is not taxable.

(d) Sales for resale.

(1) Taxable services. A cable service provider may issue a resale certificate to purchase a taxable service tax-free in the following circumstances:

(A) if the service will be transferred as an integral part of the cable television or bundled cable service. For example, if a cable service provider sells a bundled cable service that includes data storage, and the provider purchases data storage capacity from a third party, then the provider may issue a resale certificate to the provider of the data storage capacity; or

(B) if the service is performed on tangible personal property that the cable service provider will transfer to the care, custody, and control of the purchaser as an integral part of the cable television or bundled cable service. For example, if a cable service provider that provides digital video recorders or converters to purchasers hires a third party to repair a digital video recorder or converter, then the provider may issue a resale certificate to the repair service provider in lieu of paying tax on the repair service. See §3.285 of this title (relating to Resale Certificate; Sales for Resale).

(2) Tangible personal property. A resale certificate may be used to purchase tangible personal property tax free if care, custody, and control of the property are transferred to the purchaser of the cable television or bundled cable service as an integral part of the service. For example, a cable service provider may issue a resale certificate to the seller of remote controls that are provided to purchasers of the cable television service as part of the sale of the service. See §3.285 of this title.

(e) Taxable purchases.

(1) Taxable services. A cable service provider owes tax on its purchases of taxable services that are not transferred to purchasers as an integral part of a cable television or bundled cable service, but are instead used by the cable service provider in providing that service.

(2) Tangible personal property. A cable service provider owes tax on its purchases of equipment, supplies, and other items that are not transferred to the care, custody, and control of purchasers as an integral part of the cable television or bundled cable service, but are instead used by the cable service provider to provide that service. For example, a cable service provider owes tax on the satellite receiving and transmitting equipment, cables, and wiring that it uses to provide cable television service and that are not located on the purchaser's premises. Taxable items that a cable service provider purchases out of state and brings into Texas for use in providing a cable television or bundled cable service are subject to Texas use tax. See §3.346 of this title (relating to Use Tax). Credit will be allowed against the use tax for any sales or use tax legally imposed and paid to another state. See §3.338 of this title (relating to Multistate Tax Credits and Allowance of Credit for Tax Paid to Suppliers).

(3) A cable television service provider may seek an annual refund of Texas sales and use taxes paid on certain tangible personal property directly used or consumed in providing cable television services. See §3.345 of this title (relating to Annual Refund Program for Providers of Cable Television, Internet Access, and Telecommunications Services).

(f) Real property rental. An owner of real property, such as an apartment complex or hotel, that provides cable television or bundled cable service to its residents or guests must collect sales tax on any charge it imposes on residents or guests that is attributable to the cable television or bundled cable service. If the owner does not charge the residents or guests for the cable television or bundled cable service, the owner is the consumer of the service and must pay tax on that service and all services or expenses connected to the provision of that service, in accordance with subsection (b) of this section.

(g) Local tax.

(1) Cable service providers are required to collect all local tax due on the sale of cable television or bundled cable service, and on all services or expenses connected with the provision of that service, in accordance with subsection (b) of this section, based upon the point of delivery to the purchaser. For more information regarding the calculation of local tax, see Tax Code, Title 3, Subtitle C.

(2) Direct-to-home satellite. The sale of cable television or bundled cable service by means of direct-to-home satellite is exempt from local tax under the Telecommunications Act of 1996, §602. For purposes of this section, direct-to-home satellite refers to cable television or bundled cable service that is transmitted directly to a purchaser's premises, including a residence, hotel, or motel, without use of ground receiving or distribution equipment, except at the purchaser's premises or in the uplink process to the satellite. Tangible personal property transferred to the care, custody, and control of the purchaser as an integral part of the cable television or bundled cable service is considered to be part of the service and is also exempt from local tax. Equipment used by a cable service provider to provide direct-to-home satellite cable television or bundled cable service is subject to local sales and use taxes, unless otherwise exempt.

(3) Point of delivery.

(A) Service delivered through a fixed physical connection.

(i) If a cable service provider delivers, or under its contract with the purchaser is able to deliver, cable television or bundled cable service, or any portion or element thereof, to the purchaser by means of a fixed physical connection, then the address of that fixed physical connection is the point of delivery, even if the purchaser can

access the service both through a fixed physical connection and by means of nomadic access.

(ii) Two or more fixed physical connections. If fixed physical connections at two or more locations are associated with a single account, then the service provider must collect local taxes for each separately stated charge for cable television or bundled cable service based upon the location of the fixed physical connection to which the charge is allocable. For example, if a purchaser's account is associated with coaxial cable connections in City A and in City B, and the purchaser incurs a separately stated charge for a pay-per-view movie that is provided through the coaxial cable connection in City B, then the service provider should collect local taxes on the pay-per-view charge using the City B location as the point of delivery. If the service provider cannot determine the location of the fixed physical connection to which a charge is allocable, then the point of delivery is the location of the fixed physical connection designated by the purchaser prior to or at the time of purchase. Information about a purchaser's designated point of delivery must be maintained in the seller's books and records. For example, if a purchaser's account is associated with fixed physical connections at two or more locations, and the purchaser incurs a separately stated charge for video programming that is provided by means of nomadic access, then the point of delivery is the location of the fixed physical connection designated by the purchaser prior to or at the time of purchase.

(B) Service delivered by mobile telecommunications service provider. If the purchaser's account does not have a fixed physical connection, and if the cable service provider is also a mobile telecommunications service provider, then the point of delivery to the purchaser is the purchaser's place of primary use of the mobile telecommunications service, as that term is defined in §3.344 of this title.

(C) Service delivered without a fixed physical connection. If the purchaser does not have a fixed physical connection, and the cable service provider is not a mobile telecommunications service provider, then the point of delivery shall be:

(i) the purchaser's mailing address in this state. For example, if there is no fixed physical connection, but the cable service provider sends invoices to the purchaser at a mailing address in this state, or has on file in its books and records for the purchaser a mailing address in this state, then the purchaser's Texas mailing address is the point of delivery. A cable service provider acting in good faith may rely upon a statement from a purchaser regarding the purchaser's mailing address as provided in paragraph (4) of this subsection, in which case the provider will not be held liable for any additional tax, penalty, or interest if the comptroller subsequently determines that the statement is invalid; or

(ii) the address in this state that is associated with the payment instrument used by the purchaser to pay for the service, but only if the cable service provider cannot determine, or the purchaser has not provided, a mailing address in this state under clause (i) of this subparagraph.

(4) Purchaser's rights and remedies.

(A) Mailing address. If the point of delivery to the purchaser is not a fixed physical connection under paragraph (3)(A) of this subsection or the place of primary use under paragraph (3)(B) of this subsection, then the purchaser may contact the cable service provider to provide an accurate mailing address or to update the mailing address already in the provider's books and records. The cable service provider must then collect local tax on the sale of cable television and bundled cable service to the purchaser based upon the point of delivery deter-

mined in accordance with paragraph (3)(C)(i) of this subsection using the information provided by the purchaser.

(B) Refund. If a cable service provider collects local sales tax from a purchaser in error, then the purchaser may request a refund of that local sales tax from the comptroller in accordance with the procedures set forth in §3.325 of this title (relating to Refunds and Payments Under Protest).

(5) Nomadic access. If a purchaser has an account with nomadic access, the point of delivery is determined in accordance with paragraph (3) of this subsection.

(6) Tangible personal property. Tangible personal property that is transferred to the care, custody, and control of the purchaser as an integral part of a cable television or bundled cable service is regarded as a component of that service and is subject to local tax based upon the point of delivery to the purchaser in accordance with paragraph (3) of this subsection. A cable service provider is responsible for collecting local tax in accordance with Tax Code, Title 3, Subtitle C on any other sale, lease, or rental of tangible personal property. When a cable service provider charges a single price for the provision of both cable television or bundled cable service and tangible personal property that is not an integral part of that service, such as the rental of compact discs containing video programming, then the cable service provider must identify in its contracts, invoices, or books and records that portion of each charge that is attributable to the provision of tangible personal property and must collect local sales tax upon that amount in accordance with the provisions of the Tax Code governing the application of local tax to the sale of tangible personal property.

(7) Other taxable services.

(A) A cable service provider providing a service other than cable television or bundled cable service through a cable system is responsible for collecting local tax on the separately stated charges for that service in accordance with Tax Code, Title 3, Subtitle C, or, if applicable, the specific provisions of the section of the title that address the services provided. For example, a cable service provider who provides an information service for a separate charge must collect the local tax due on that charge in accordance with the provisions of Tax Code, §321.203 and §323.203.

(B) A service provider, other than a cable service provider, who provides services through a cable system is responsible for collecting local tax on those services in accordance with Tax Code, Title 3, Subtitle C, or, if applicable, the specific provisions of the section of the title that address the services provided.

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

Filed with the Office of the Secretary of State on January 27, 2014.

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Ashley Harden

General Counsel

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387



SUBCHAPTER S. MOTOR FUEL TAX

34 TAC §3.434

The Comptroller of Public Accounts adopts an amendment to §3.434, concerning liquefied gas tax decal, with changes to the proposed text as published in the November 15, 2013, issue of the *Texas Register* (38 TexReg 8132).

Subsection (a) states this rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, are governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L. The amendment removes subsection (a) as the 2004 date is no longer relevant and Subchapter L has been repealed. Subsequent subsections are re-lettered and corrections to subsections referenced are made throughout the section.

Subsections (a) and (g)(2) are amended to implement House Bill 2148, 83rd Legislature, 2013. Subsection (a) deletes the reference to natural gas and methane as a means of powering a motor vehicle that is required to obtain a liquefied gas decal. Subsection (g)(2) is amended to allow the use of a Class T liquefied gas decal for compressed natural gas and liquefied natural gas transit vehicles operated by metropolitan transit authorities and regional transit authorities under Tax Code, §162.312.

No comments were received regarding adoption of the amendment. Subsection (h) contains a correction of a grammatical error. No substantive change is intended.

The amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §§162.302, 162.3021, 162.305, 162.306, and 162.312.

§3.434. Liquefied Gas Tax Decal.

(a) Use of decal. Except as provided in subsections (b), (c), and (f) of this section, a person who operates a motor vehicle that is required to be licensed in Texas for use on the public highways of Texas and that is powered by ethane, propane, butane, or a mixture of those gases, including a motor vehicle equipped to use liquefied gas interchangeably with another motor fuel, must:

- (1) obtain from the comptroller a liquefied gas decal; and
- (2) prepay the liquefied gas tax to the comptroller on an annual basis.

(b) Motor Vehicle Dealer. A motor vehicle dealer registered under Transportation Code, Chapter 503, must pay the liquefied gas tax to a licensed liquefied gas dealer when the fuel is delivered into the fuel supply tanks of each motor vehicle that display a motor vehicle dealer decal and that is held for resale.

(c) Interstate trucker. An interstate trucker registered under a multistate tax agreement (International Fuel Tax Agreement), must pay the liquefied gas tax to a licensed liquefied gas dealer when the fuel is delivered into the fuel supply tanks of motor vehicles that have two axles and a registered gross weight in excess of 26,000 pounds; have three or more axles, or are used in combination and the registered gross weight of the combination exceeds 26,000 pounds, and that display current multistate tax agreement (International Fuel Tax Agreement) decals.

(d) Vehicle registered in another state. A liquefied gas tax decal cannot be issued to a motor vehicle registered in a state other than Texas. Owners of such vehicles must pay tax to a licensed liquefied gas dealer on fuel delivered into the fuel supply tanks.

(e) Application. Each person purchasing liquefied gas for use in a liquefied gas powered motor vehicle must submit an annual application to the comptroller for each vehicle.

(1) Initial application. An applicant initially applying for a liquefied gas tax decal for a Class A - F motor vehicle must purchase a decal based on an estimate of miles that will be driven during the next one-year period.

(2) Renewal. The applicant must produce an ending odometer reading on the renewal application. In the absence of an ending odometer reading, the previous year's mileage will be presumed to be at least 15,000 miles. Applications for the upcoming year should be submitted during the month of expiration of the current decal.

(A) The liquefied gas tax does not apply to miles traveled outside the state. A record of miles traveled by the motor vehicle outside Texas must be maintained and submitted with the renewal each year. The record must include the date(s) of travel, beginning and ending odometer readings and destination.

(B) Special use vehicles. Vehicles required to be licensed for highway use but whose main purpose, design, and use is off the highway may renew a liquefied gas decal for a rate less than the mileage indicated on the odometer if a record or log indicating the miles traveled on the highway by the vehicle is maintained and attached to the renewal application.

(f) Exceptions.

(1) School district transportation and county exceptions. The liquefied gas tax does not apply to liquefied gas sold to public school districts and counties in this state, or to commercial transportation companies providing transportation services to public school districts in this state. These transportation companies must obtain letters of exception from the comptroller, as discussed in §3.448 of this title (relating to Transportation Services for Texas Public School Districts).

(2) Decal not required. A public school district, a commercial transportation company providing transportation services to a public school district and holding a valid letter of exception from the comptroller, or a county in this state operating a motor vehicle powered by liquefied gas is not required to prepay the liquefied gas tax and obtain a decal for the motor vehicle.

(g) Rate schedule.

(1) The following rate schedule (based on mileage driven the previous year) applies.

Figure: 34 TAC §3.434(g)(1)

(2) Transit company. A special use liquefied gas tax decal and tax is required for the following type of vehicles: Class T: Transit carrier vehicles operated by a transit company, \$444. The Class T special use liquefied gas decal may be displayed by compressed natural gas and liquefied natural gas transit carrier vehicles that qualify under Tax Code, §162.312.

(h) Display of decal. The decal shall be affixed to the inside, lower right corner of the windshield (passenger side) of the vehicle. An expired or invalid liquefied gas tax decal shall be removed before installing a new decal or transferring ownership of the motor vehicle.

(i) Refunds; transfer of decal. If a motor vehicle bearing a liquefied gas tax decal is sold, transferred, destroyed, or the liquefied gas carburetor system (regulator or fuel supply tank) is removed from the motor vehicle the owner is entitled to a refund of the unused portion of the advanced taxes paid for the decal year. The owner must submit to the comptroller the liquefied gas tax decal with an affidavit identifying the motor vehicle and circumstances for requesting a refund.

The comptroller shall refund that portion of the tax payment that corresponds to the number of complete months remaining in the decal year.

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

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Ashley Harden

General Counsel

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387



34 TAC §3.447

The Comptroller of Public Accounts adopts an amendment to §3.447, concerning reports, due dates, bonding requirements, and qualifications for annual filers, with changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7629). The changes are in subsections (a)(5), (b)(2), and (b)(3).

Subsection (a) states this rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, are governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L. The amendment removes subsection (a) as the 2004 date is no longer relevant and Subchapter L has been repealed. Subsequent subsections are re-lettered.

Re-lettered subsection (a) is being amended to implement House Bill 2148, 83rd Legislature, 2013. New paragraph (4) is added to provide guidelines for filing the compressed natural gas and liquefied natural gas dealer return quarterly or annually. New paragraph (5) is added to require sales of compressed natural gas and liquefied natural gas from September 1, 2013, through December 31, 2013, be reported on the 2013 annual return. New paragraph (5) has been amended to correct a typographical error.

Re-lettered subsection (b) is being amended to add new paragraph (2), which identifies the due date for quarterly returns. The subsequent paragraph is re-numbered accordingly. New paragraph (2) has been amended to clarify that quarterly reports are due on the 25th day of the month following the end date of the calendar quarter. Paragraph (3) is amended to clarify that a liquefied gas interstate trucker may request a refund on the annual report for taxes paid on liquefied gas used out-of-state.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §162.362.

§3.447. *Reports, Due Dates, Bonding Requirements, and Qualifications for Annual Filers.*

(a) Reports required.

(1) A dyed diesel fuel bonded user with an average quarterly tax liability of \$600 or less has the option to file reports each quarter or each year. After a dyed diesel fuel bonded user has selected a method of reporting, the method cannot be changed without permission from the comptroller unless the dyed diesel fuel bonded user's tax liability for a year exceeds \$2,400, or the comptroller deems change otherwise necessary. If the dyed diesel fuel bonded user's diesel fuel tax liability during a year exceeds \$2,400, the dyed diesel fuel bonded user must file a report for all previous quarters of that year. Future reports must be filed on a quarterly basis.

(2) Dyed diesel fuel bonded users with an average quarterly tax liability of more than \$600 must file quarterly reports.

(3) Liquefied gas dealers and liquefied gas interstate truckers must file annual reports.

(4) Compressed natural gas and liquefied natural gas dealers with an average quarterly tax liability of \$600 or less have the option to file reports each quarter or each year. After a compressed natural gas and liquefied natural gas dealer has selected a method of reporting, the dealer cannot change the method without permission from the comptroller, unless the compressed natural gas and liquefied natural gas dealer's tax liability for a year exceeds \$2,400. The comptroller may require a compressed natural gas and liquefied natural gas dealer to change its method of reporting when the comptroller deems change otherwise necessary. If the compressed natural gas and liquefied natural gas dealer's tax liability during a year exceeds \$2,400, the compressed natural gas and liquefied natural gas dealer must file a report for all previous quarters of that year. Future reports must be filed on a quarterly basis.

(5) The report and payment of tax on sales of compressed natural gas and liquefied natural gas made from September 1, 2013, through December 31, 2013, are to be included with the 2013 annual return.

(b) Due dates.

(1) The due date for all annual reports is January 25th.

(2) The due date for all quarterly reports is the 25th day of the month following the calendar quarter end date.

(3) If the report is filed by the due date, a request for refund of taxes paid on liquefied gas used out-of-state by a liquefied gas interstate trucker must be made on the annual report.

(c) Bonding requirements. Dyed diesel fuel bonded users that report annually will be required to post security in the amount of two times the annual tax liability on taxable uses of diesel fuel. The minimum bond is \$10,000. The bond may be waived if it is determined that the bond is not necessary to protect the state.

(d) Qualifications.

(1) A license holder that is going out of business or whose license is cancelled must file a report on or before the 25th day of the month following the calendar quarter in which business ceased.

(2) Dyed diesel fuel bonded users will be notified each March of any filing status change based on the dyed diesel fuel bonded user's previous-year reports.

(e) Liquefied gas reports. Licensed liquefied gas dealers who are also liquefied gas interstate truckers registered under a multistate tax agreement must file their liquefied gas dealer report with the same frequency that they report their interstate trucker operations under the multistate tax agreement.

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

Filed with the Office of the Secretary of State on January 27, 2014.

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Ashley Harden

General Counsel

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387





*Damon Lozey
12th Grade*

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 UNDER TEXAS INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96 AND NOTICE OF HEARING - RESCHEDULED

The commissioner of insurance has scheduled a hearing under Docket No. 2762 at 10:00 a.m., Central time, on February 18, 2014, in Room 100 of the William P. Hobby State Office Building, 333 Guadalupe Street, Austin, Texas, to take action on the TDI staff petition, No. W-1213-01-I, filed on December 30, 2013. This hearing will substitute for the hearing that was originally scheduled for Petition No. W-1213-01-I (January 24, 2014), which was canceled due to inclement weather.

If you wish to comment on the petition and exhibits, please submit two copies of your comments to TDI by February 18, 2014. Send one copy to the Office of the Chief Clerk, Texas Department of Insurance, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104. Send the other copy to Nancy Moore, Team Lead, Workers' Compensation Classification and Premium Calculation, Texas Department of Insurance, P.O. Box 149104, Mail Code 105-2A, Austin, Texas 78714-9104. You may also present comments at the hearing.

The petition requests that the commissioner adopt the *National Council on Compensation Insurance (NCCI) Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*, to allow NCCI to assume certain workers' compensation functions in Texas, for Texas workers' compensation policies with an effective date on or after 12:01 a.m., June 1, 2014.

NCCI is the largest provider of workers' compensation and employee injury data and workers' compensation statistics in the nation. It is a licensed advisory organization in Texas, and is Texas' workers' compensation statistical agent. As of December 2013, there are 34 states plus the District of Columbia that are "NCCI states," which means that NCCI administers certain workers' compensation functions in those states, 11 independent states, including Texas, and four monopolistic states. If Texas becomes an NCCI state, policyholders operating in other NCCI states and carriers writing workers' compensation coverage in multiple NCCI states would have more consistent rules.

Carriers would pay additional fees to NCCI for subscribing to NCCI services in Texas. For the top four national workers' compensation carriers, the current cost range for NCCI services is 11 to 18 cents per \$100 of direct written premium. However, the additional fees may be offset by the reduction in the maintenance taxes for workers' compen-

sation that are payable and due to the Comptroller of Public Accounts on March 1, 2014. NCCI has developed a transition plan through 2015 allowing discounts for additional Texas services. Agents would pay an annual \$50 fee to access the *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*. NCCI will offer free access to agents to the *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*, until June 1, 2015.

Adopting the cited NCCI manuals and exceptions would allow NCCI to operate in Texas by: 1) drafting new or revised manual rules and forms; 2) filing the rules and forms with the Texas Department of Insurance for acceptance as submitted, acceptance with changes, or rejection; 3) assigning classification codes to businesses upon request; and 4) responding to telephone and written inquiries regarding workers' compensation classification and premium calculation.

The *NCCI Basic Manual* and the Texas exceptions incorporate the Texas classifications currently in effect; so as a result of this rule, the current Texas classifications would remain in effect, and would not change to the national classifications used in most NCCI states.

The Texas exceptions update the premium discount table that is currently available for carriers to use for policyholders who meet the eligibility requirements. They also include updated percentages and minimum premiums for increased limits for employers' liability coverage if a policyholder elects employers' liability limits above the standard limits. The updated percentages are based on NCCI's actuarial analysis of more recent historical loss experience, which results in percentages that more closely reflect what the additional premium should be for optional increased limits for employers' liability coverage.

The Texas exceptions replace the aggregate deductible and the per accident/aggregate deductible options with the per claim deductible and the medical-only deductible options to eliminate two options that are rarely chosen for Texas workers' compensation policies and add two other options that are used in other NCCI states. The Texas exception pages do not include tables for the premium credits for the per accident, per claim, and medical-only deductible options. Instead, the Texas exception pages direct carriers to use loss elimination ratios (LERs) to calculate premium credits for those deductible options. Many carriers that operate in Texas already use LERs to calculate their premium credits in other states. As part of its transition plan, NCCI will provide information to carriers and respond to inquiries on LERs.

With the adoption of the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*, staff proposes to adopt 62 endorse-

ments and forms, most of which already exist in the *Texas Basic Manual*, and two of which are new to Texas, but that clarify and standardize practices that are already common in Texas.

With this petition, staff proposes that policies with an effective date on or after 12:01 a.m., June 1, 2014, will use the rules, classifications, endorsements, and forms contained in the *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*. The *Texas Experience Rating Plan* contained in the *Texas Basic Manual* will continue in effect until TDI adopts the *NCCI Experience Rating Plan* with Texas exceptions. Staff proposes that the commissioner consider any proposed revisions to NCCI's manuals under either the procedure established in Insurance Code Article 5.96 or under an alternate procedure that also incorporates notice and opportunity for comment.

If Texas becomes an NCCI state, the commissioner of insurance and TDI will continue to fulfill all workers' compensation statutory requirements, such as: 1) prescribing standard policy forms and a uniform policy; 2) approving non-standard forms and endorsements; 3) determining hazards by classifications; 4) requiring carriers to use the classifications determined for Texas; 5) establishing classification relativities; 6) adopting a uniform experience rating plan; and 7) developing and updating statistical plans, as necessary.

In order for Texas to become an NCCI state for workers' compensation purposes, TDI must adopt the *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*. The Texas exceptions to the NCCI rules and forms are necessary to preserve the rules that are unique to Texas and to make the transition to an NCCI state as seamless as possible for policyholders.

Insurance Code Article 5.96 and §§2051.002, 2051.201, 2052.002, 2053.051, and 2053.052 authorize staff to file this petition and the commissioner to take the requested action. Article 5.96(a) authorizes TDI to prescribe, promulgate, adopt, approve, amend, or repeal standard and uniform manual rules, rating plans, classifications plans, statistical plans, and policy and endorsement forms for various lines of insurance, including workers' compensation insurance. Article 5.96(b) allows any interested person to initiate proceedings with respect to any matter specified in section (a) by filing a written petition with the chief clerk.

Section 2051.002 requires that Insurance Code Chapters 2051, 251 (as it relates to workers' compensation insurance), 255, 426, 2052, 2053, and 2055 be construed and apply independently of any other law that relates to insurance rates and forms or prescribes the duties of the commissioner or TDI.

Section 2051.201 allows the commissioner to adopt and enforce all reasonable rules as are necessary to carry out the provisions of a law referenced in §2051.002(1), (2), (3), (4), or (5).

Section 2052.002 requires the commissioner to prescribe standard policy forms and a uniform policy for workers' compensation insurance.

Section 2053.051 requires TDI to determine hazards by class, establish classification relativities, and revise the classification system at least once every five years.

Section 2053.052 requires the commissioner to adopt a uniform experience rating plan for workers' compensation insurance and revise it at least once every five years. It also requires the commissioner to adopt reasonable rules and plans requiring the interchange of loss experience necessary for the application of the rating plan.

You may review a copy of the petition on the TDI website at www.tdi.texas.gov/rules/2013/exrules.html or they may review a copy of the petition and exhibits in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701. For further information or to request copies of the petition and exhibits, please contact the Office of the Chief Clerk by email at ChiefClerk@tdi.texas.gov or by phone at (512) 463-6327 (Reference No. W-1213-01-I).

TDI publishes this notification under Article 5.96 of the Texas Insurance Code, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, Chapter 2001).

TRD-201400334

Sara Waitt

General Counsel

Texas Department of Insurance

Filed: January 29, 2014



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: 34 TAC §3.434(g)(1)

<u>Registered Gross Weight</u>	<u>Less Than 5,000 Miles</u>	<u>5,000 to 9,999 Miles</u>	<u>10,000 to 14,999 Miles</u>	<u>15,000 Miles and Over</u>
Class A: Less than 4,000 pounds	\$30	\$60	\$90	\$120
Class B: 4,000 to 10,000 pounds	\$42	\$84	\$126	\$168
Class C: 10,001 to 15,000 pounds	\$48	\$96	\$144	\$192
Class D: 15,001 to 27,500 pounds	\$84	\$168	\$252	\$336
Class E: 27,501 to 43,500 pounds	\$126	\$252	\$378	\$504
Class F: 43,501 and over	\$186	\$372	\$558	\$744

Figure: 37 TAC §35.52

VIOLATION	VIOLATION DESCRIPTION	FINE AMOUNT
UNI - Uniform Violation	Failure to display last name identification on outermost garment	\$25.00
UNI - Uniform Violation	Failure to display the word "Security" on outermost garment	\$50.00
UNI - Uniform Violation	Failure to display company name on outermost garment	\$50.00
FPPC - Failure to present pocket card	Failure to present pocket card upon request; failure to present valid government issued photo I.D. if no photo on card	\$100.00
RECV - Employee records violation	Full name of employee	\$25.00
RECV - Employee records violation	Position of employee	\$25.00
RECV - Employee records violation	Current residence of the security officer as reported by security officer	\$25.00
RECV - Employee records violation	Date of employment when performing a regulated service	\$25.00
RECV - Employee records violation	Address of employee as reported by employee	\$25.00
RECV - Employee records violation	Social security number	\$25.00
RECV - Employee records violation	Last date of employment	\$25.00
RECV - Employee records violation	Date of birth	\$25.00
RECV - Employee records violation	Place of birth	\$25.00
RECV - Employee records violation	One color photograph	\$25.00
RECV - Employee records violation	Failure to keep employee records two (2) years from termination	\$100.00
RECV - Employee records violation	Commission only - Current duty assignment and location	\$50.00
DT - RECV - Drug testing record violation	Refusal to comply with drug testing rule	\$500.00 per quarter

VIOLATION	VIOLATION DESCRIPTION	FINE AMOUNT
OPSL - Operating while license suspended	Operating with a suspended license	\$500.00 every fourteen (14) days
OPEL - Operating while license expired	Operating with an expired license	\$500.00 every fourteen (14) days
REG - Registration violation	Failure to submit registration application prior to regulated employment	\$200.00
ADDR - Address change violation	Failure to notify the department within fourteen (14) days of change of address	\$350.00
CON - Other Contract Violation	Licensee failure to provide written report within seven (7) days	\$500.00
DISP - Consumer Sign Violation	Failure to display the consumer sign in a prominent place	\$100.00
POST - Failure to post license	Failure to post the license	\$100.00
ADV - Advertising Violation	Failure to have company name as stated in department records	\$100.00
ADV - Advertising Violation	Failure to have company address as stated in department records	\$100.00
ADV - Advertising Violation	Failure to display license number as issued by the department	\$100.00
BRNC - Failure to notify establishment of branch office	Failure to notify department within fourteen (14) days of opening branch office	\$500.00
BRNT - Failure to notify closing of branch office	Failure to notify department within fourteen (14) days of closing of branch office	\$350.00
CHNG - Failure to notify Department of change of license name	Failure to notify department of a change in business name	\$500.00
MGRQ - Failure to Qualify a Manager	Failure to qualify a manager within sixty (60) days	\$500.00 every fourteen (14) days
MGRS - Manager failing to control business	Manager failing to maintain adequate supervision	\$3,000.00
MGR T - Failure to notify Department of manager termination within 14 days	Failure to notify department of manager termination within fourteen (14) days	\$500.00
OPS - Failure to notify Department of a change of ownership	Failure to notify change of ownership within fourteen (14) days	\$500.00 every fourteen (14) days
SEAL - Using State Seal or DPS Seal	Improper use of State Seal of Texas or Insignia of Texas Department of Public Safety	\$500.00

VIOLATION	VIOLATION DESCRIPTION	FINE AMOUNT
OPINS - Operational Insurance Violation	Operating without insurance, or outside scope of coverage	\$500.00 every fourteen (14) days
INSD - Insurance Documentation Violation	Failure to comply with requirements relating to proof of insurance	\$500.00
RECV - Employee records violation	Failure to conduct preemployment check	\$500.00
TSREC - Training/CE School records violation	Failure to maintain required records	\$50.00
FAV - Firearm violations	Commission only - violations of firearm related rules on conduct	\$500.00
OPOS - Operating Outside Scope of License	Performing regulated service beyond scope of current license	\$5000.00
FD	Failure to maintain required records	\$50.00
RSOL - Residential Solicitation Violation	Violation of §35.10 of this chapter by company	\$500.00 per violation
RSOL - Residential Solicitation Violation	Violation of §35.10 of this chapter by individual	\$100.00 per violation

Figure: 37 TAC §35.131(a)

LICENSING AND EXAMINATION FEES

Class A license (original and renewal)	\$350.00
Class B license (original and renewal)	\$400.00
Class C license (original and renewal)	\$540.00
Class T license (original and renewal)	\$2,500.00
Assignment of license	\$150.00
Branch office certificate and renewal	\$300.00
Change name of licensee	\$75.00
Delinquency fee (post-expiration renewal penalty)	\$30.00
Duplicate pocket card	\$10.00
Employee information update fee	\$15.00
Criminal history check fee	\$31.50
Letter of authority fee for private business	\$400.00
Letter of authority renewal fee for private business and political subdivision	\$225.00
Manager reexamination	\$100.00
Personal protection officer endorsement	\$50.00
Preliminary criminal history check and evaluation letter	\$100.00
Pocket card endorsement (add or delete)	\$20.00
Reinstate suspended company license	\$150.00
Registration fee for alarm systems monitor	\$30.00
Registration fee for dog trainer	\$30.00
Registration fee for employee of license holder	\$30.00
Registration fee for noncommissioned security officer (original and renewal)	\$30.00
Registration fee for owner, officer, partner, or shareholder of a license holder	\$50.00
Registration fee for private investigator, manager, branch office manager, locksmith, electronic access control device installer, and alarm systems installer (original and renewal)	\$30.00
Registration fee for security consultant	\$30.00
Registration fee for security salesperson	\$30.00
School instructor fee (original and renewal)	\$100.00
Security officer commission fee (original and renewal)	\$50.00
Training school and continuing education (CE) school approval fee (original and renewal)	\$350.00



Paige R.
12th Grade

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 State Affordable Housing Corporation

Notice of Request for Proposals

Notice is hereby given of a Request for Proposals (RFP) by Texas State Affordable Housing Corporation (TSAHC) to financial institutions that can provide trustee services for TSAHC's Single Family Mortgage Revenue Bond Program. Financial institutions interested in providing trustee services must submit all of the materials listed in the RFP which can be found on the TSAHC's website at www.tsahc.org.

The deadline for submissions in response to this RFP is Monday, March 10, 2014. No proposal will be accepted after 3:00 p.m. on that date. Responses should be emailed to Melinda Smith at msmith@tsahc.org. Faxed responses will not be accepted. For questions or comments, please contact Melinda Smith at (512) 904-1399 or by email at msmith@tsahc.org.

TRD-201400327

David Long

President

Texas State Affordable Housing Corporation

Filed: January 29, 2014



Notice of Request for Proposals

Notice is hereby given of a Request for Proposals (RFP) by Texas State Affordable Housing Corporation (TSAHC) to Certified Public Accounting firms that can provide auditing and tax services for TSAHC. Firms interested in providing auditing and tax services must submit all of the materials listed in the RFP which can be found on the TSAHC's website at www.tsahc.org.

The deadline for submissions in response to this RFP is Monday, March 10, 2014. No proposal will be accepted after 3:00 p.m. on that date. Responses should be emailed to Melinda Smith at msmith@tsahc.org. Faxed responses will not be accepted. For questions or comments, please contact Melinda Smith at (512) 904-1399 or by email at msmith@tsahc.org.

TRD-201400328

David Long

President

Texas State Affordable Housing Corporation

Filed: January 29, 2014



Office of the Attorney General

Texas Water Code and Texas Health and Safety Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and the Texas Health and Safety Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments

and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code and the Texas Health and Safety Code.

Case Title and Court: *Harris County, Texas and the State of Texas, acting by and through the Texas Commission on Environmental Quality v. Equistar Chemicals, L.P.*, Cause No. 2012-49189, in the 165th Judicial District Court, Harris County, Texas.

Nature of Defendant's Operations: Equistar Chemicals, L.P. owns and operates a chemical manufacturing plant in Channelview, Harris County, Texas. On four separate occasions, the plant experienced upset events which resulted in the emission of multiple air contaminants in excess of its permitted limits. In addition to the unauthorized emissions, Equistar failed to timely report some of the emissions events to Harris County and Texas Commission on Environmental Quality (TCEQ) as required by TCEQ rules.

Proposed Agreed Judgment: The Agreed Final Judgment orders the Defendant to pay civil penalties of \$100,000 to be divided equally between Harris County and the State of Texas. The Defendant will pay attorney's fees to the State of Texas in the amount of \$11,000 and attorney's fees to Harris County in the amount of \$8,675. The Judgment includes an injunction whereby Equistar shall revise its emissions event reporting procedures to ensure timely notification to Harris County.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Mary E. Smith, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201400319

Katherine Cary

General Counsel

Office of the Attorney General

Filed: January 29, 2014



Capital Area Council of Governments

Request for Proposals - Financial Institutions

The Capital Area Council of Governments (CAPCOG) is requesting proposals from eligible financial institutions to be designated as depository for CAPCOG and the Capital Area Emergency Communications District. This includes the basic services of receiving deposits, paying items, wiring funds, stop payments, and other business banking activities. The Request for Proposals packet is available at www.capcog.org, or by contacting Sheila Jennings at sjennings@capcog.org.

All sealed proposals must be mailed or hand delivered by 5:00 p.m. on Friday, March 14, 2014, to the CAPCOG Offices located at 6800 Burlinson Road, Building 310, Suite 165, Austin, Texas 78744-2306.

TRD-201400320
Kate Barrett
Administrative Assistant
Capital Area Council of Governments
Filed: January 29, 2014

◆ ◆ ◆
Request for Proposals - FY 2014-2015 Solid Waste Grants Program

The Capital Area Council of Governments (CAPCOG) is accepting applications from eligible entities for the FY 2014-2015 Solid Waste Grants Program to implement solid waste management initiatives in our region. There will be a Grant Application Workshop from 10:00 a.m. to noon Thursday, February 13, 2014, at CAPCOG's offices, 6800 Burleson Road, Building 310, Suite 165, Austin, Texas 78744.

Applications must be received by Friday, March 28, 2014. Please visit www.capcog.org for additional information.

TRD-201400321
Kate Barrett
Administrative Assistant
Capital Area Council of Governments
Filed: January 29, 2014

◆ ◆ ◆
Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/27/14 - 02/02/14 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/27/14 - 02/02/14 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 02/01/14 - 02/28/14 is 5.00% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 02/01/14 - 02/28/14 is 5.00% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-201400227
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: January 22, 2014

◆ ◆ ◆
Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009 Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/03/14 - 02/09/14 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/03/14 - 02/09/14 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-201400313
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: January 27, 2014

◆ ◆ ◆
Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §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 **March 10, 2014**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 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 March 10, 2014**. 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, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Akzo Nobel Polymer Chemicals LLC; DOCKET NUMBER: 2013-1730-AIR-E; IDENTIFIER: RN102177391; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §§101.20(1), 116.115(c), and 122.143(4), Texas Health and Safety Code (THSC), §382.085(b), 40 Code of Federal Regulations §60.18(c)(3)(ii), Federal Operating Permit (FOP) Number O3331, Special Terms and Conditions (STC) Numbers 1A and 9, New Source Review (NSR) Permit Number 19545, Special Conditions (SC) Number 3, NSR Permit Number 33000, SC Number 2A, NSR Permit Number 34028, SC Number 5A, NSR Permit Number 45065, SC Number 7A, and NSR Permit Number 7700, SC Number 5A, by failing to maintain the minimum net heating value of 300 British thermal units per standard cubic foot for the Flare (Emission Point Number SF-1); and 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), FOP Number

O3331, STC Number 9, and NSR Permit Number 19545, SC Number 5, by failing to maintain records of pressure testing performed after the replacement of piping or connection equipment; PENALTY: \$23,251; Supplemental Environmental Project offset amount of \$9,300 applied to Houston - Galveston AERCO; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Alex Deven, Incorporated dba RED OAK MART; DOCKET NUMBER: 2013-1931-PST-E; IDENTIFIER: RN102281920; LOCATION: Red Oak, Ellis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month; and 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$3,693; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: AMERICAN ONE-STOP CONVENIENCE STORE, INCORPORATED dba Handy Stop; DOCKET NUMBER: 2013-1771-PST-E; IDENTIFIER: RN103993150; LOCATION: Wichita Falls, Wichita County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month; and 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$7,330; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(4) COMPANY: ASAD ALI CORPORATION dba Sunrise Food Mart; DOCKET NUMBER: 2013-1611-PST-E; IDENTIFIER: RN103023701; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$3,879; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: Atmos Energy Corporation; DOCKET NUMBER: 2013-1731-AIR-E; IDENTIFIER: RN100542505; LOCATION: Athens, Henderson County; TYPE OF FACILITY: natural gas compressor station; RULE VIOLATED: 30 TAC §§101.20(3), 113.1090, and 122.143(4), Texas Health and Safety Code, §382.085(b), 40 Code of Federal Regulations §63.6640(a), and Federal Operating Permit Number 2458, General Terms and Conditions and Special Terms and Conditions Number 4, by failing to stay within the allowable monthly pressure drop range for Compressor Engine Unit Numbers 2, 3, 4, and 5; PENALTY: \$15,300; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: Bao Vu Nguyen; DOCKET NUMBER: 2013-0778-MWD-E; IDENTIFIER: RN101721264; LOCATION: Brazos

County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: 30 TAC §30.350(d) and §305.125(1), and TCEQ Permit Number WQ0011869001 Special Provisions Number 2, by failing to employ or contract one or more licensed wastewater treatment facility operators or wastewater system operations companies holding a valid license or registration; 30 TAC §305.125(1) and (11)(B) and TCEQ Permit Number WQ0011869001 Monitoring Requirements 3.b and Operational Requirements Number 1, by failing to maintain operations, maintenance, and monitoring records; 30 TAC §305.125(1) and (11)(B) and TCEQ Permit Number WQ0011869001 Special Provisions Number 16, by failing to maintain sludge records; 30 TAC §305.125(1) and TCEQ Permit Number WQ0011869001 Special Provisions Number 6, by failing to provide equipment to determine application rates and to maintain accurate records of the volume of effluent applied to the irrigation field; and 30 TAC §305.125(1) and TCEQ Permit Number WQ0011869001 Special Provisions Number 3, by failing to properly operate and maintain all facilities and systems of treatment and control; PENALTY: \$23,100; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: Bennie Len Gallier; DOCKET NUMBER: 2013-1850-MSW-E; IDENTIFIER: RN106538929; LOCATION: Orange, Orange County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of MSW; PENALTY: \$1,312; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(8) COMPANY: City of Caddo Mills; DOCKET NUMBER: 2013-1857-MWD-E; IDENTIFIER: RN104798681; LOCATION: Caddo Mills, Hunt County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010425002, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, by failing to comply with permitted effluent limitations; PENALTY: \$16,312; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: City of Marble Falls; DOCKET NUMBER: 2013-1675-PWS-E; IDENTIFIER: RN101389583; LOCATION: Marble Falls, Burnet County; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.46(d)(2)(B) and §290.110(b)(4), and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.5 milligrams per liter total chlorine throughout the distribution system at all times; 30 TAC §290.46(m)(1)(A), by failing to conduct an annual inspection of each of the system's ground and elevated storage tanks; and 30 TAC §290.46(m)(1)(B), by failing to conduct an annual inspection of the system's two pressure tanks; PENALTY: \$2,197; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753-1808, (512) 339-2929.

(10) COMPANY: City of New Boston; DOCKET NUMBER: 2012-1920-MWD-E; IDENTIFIER: RN101920916; LOCATION: New Boston, Bowie County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010482001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; and 30 TAC §305.125(1) and (17) and §319.7(d), and TPDES Permit Number WQ0010482001, Biomoni-

toring Requirements Number 3(b)(3), by failing to submit monitoring results at the intervals specified in the permit; PENALTY: \$35,062; Supplemental Environment Project offset amount of \$28,050 applied to Wastewater Treatment Plant Aerator Project; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(11) COMPANY: City of New Home; DOCKET NUMBER: 2013-1688-PWS-E; IDENTIFIER: RN101389146; LOCATION: New Home, Lynn County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.43(c)(6) and (8), by failing to ensure that all clearwells, ground storage tanks, standpipes and elevated tanks are painted, disinfected, and maintained in strict accordance with current American Water Works Association standards; PENALTY: \$315; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(12) COMPANY: City of O'Donnell; DOCKET NUMBER: 2012-0396-MLM-E; IDENTIFIER: RN101918548; LOCATION: O'Donnell, Lynn County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §30.350(d) and §305.125(1) and TCEQ Permit Number WQ0011126001 Special Provisions Number 2, by failing to employ or contract a wastewater treatment facility operator holding the appropriate level of license; 30 TAC §305.125(1) and (5) and TCEQ Permit Number WQ0011126001 Operational Requirements Number 4, by failing to maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures; 30 TAC §305.125(1) and TCEQ Permit Number WQ0011126001 Monitoring Requirements Number 5, by failing to conduct, at a minimum, annual calibration of the flow meter used to measure flow to the land application area; 30 TAC §305.125(1) and TCEQ Permit Number WQ0011126001 Special Provisions Number 13, by failing to submit liner certifications for the storage ponds and facultative lagoon; 30 TAC §305.125(1) and TCEQ Permit Number WQ0011126001 Special Provisions Number 10, by failing to timely submit the annual soil sampling report for the land application area by September 30, 2011; 30 TAC §305.125(1) and (5) and TCEQ Permit Number WQ0011126001 Operational Requirements Number 1 and Special Provisions Number 11, by failing to ensure that all systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1) and TCEQ Permit Number WQ0011126001 Operational Requirements Number 1, by failing to secure the collection system lift stations; and 30 TAC §330.9(a), by failing to obtain authorization prior to storing, processing, removing, or disposing of any municipal solid waste; PENALTY: \$26,988; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(13) COMPANY: City of Port Arthur; DOCKET NUMBER: 2013-1685-PST-E; IDENTIFIER: RN102041332; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: fleet refueling facility; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide release detection for the suction piping associated with the underground storage tank system; PENALTY: \$2,813; ENFORCEMENT COORDINATOR: Lisa Westbrook, (512) 239-1160; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: City of Ranger; DOCKET NUMBER: 2013-1711-PWS-E; IDENTIFIER: RN101454841; LOCATION: Ranger, Eastland County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.117(c)(2)(A) and (i)(1), by failing to collect lead and copper tap samples at the required 20 sample sites and provide the results to the executive director; 30 TAC §290.106(e), by

failing to provide the results of annual nitrate sampling to the executive director for the 2012 monitoring period; 30 TAC §290.113(e), by failing to provide the results of quarterly sampling for Stage 1 disinfectant byproduct contaminant levels to the executive director; 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to operate the disinfection equipment to maintain a minimum disinfectant residual of 0.5 milligrams per liter total chlorine throughout the distribution system at all times; and 30 TAC §290.44(d) and §290.46(r), by failing to operate the facility to maintain a minimum pressure of 35 pounds per square inch throughout the distribution system under normal operating conditions at all times; PENALTY: \$3,562; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(15) COMPANY: City of Richardson; DOCKET NUMBER: 2013-1941-WQ-E; IDENTIFIER: RN101386696; LOCATION: Richardson, Dallas County; TYPE OF FACILITY: public water system; RULE VIOLATED: TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of a pollutant into or adjacent to water in the state; and TWC, §26.039(b), by failing to provide timely notification to the TCEQ of an accidental discharge which causes pollution; PENALTY: \$12,375; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Durk Zwart dba Zwart Dairy; DOCKET NUMBER: 2013-1879-AGR-E; IDENTIFIER: RN102065281; LOCATION: Erath County; TYPE OF FACILITY: concentrated animal feeding operation; RULE VIOLATED: 30 TAC §321.33(a) and TWC, §26.121(a)(1), by failing to obtain authorization for a concentrated animal feeding operation; PENALTY: \$5,625; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: E.J. FUEL INVESTMENTS, LLC dba First Choice Convenience Store; DOCKET NUMBER: 2013-1830-PST-E; IDENTIFIER: RN104891338; LOCATION: Laredo, Webb County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$2,568; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(18) COMPANY: ETOCO, L.P.; DOCKET NUMBER: 2013-1963-AIR-E; IDENTIFIER: RN106819840; LOCATION: Highlands, Harris County; TYPE OF FACILITY: oil and gas handling and production site; RULE VIOLATED: 30 TAC §101.10(e) and Texas Health and Safety Code, §382.085(b), by failing to submit annual emissions inventories for calendar years 2009-2012; PENALTY: \$3,600; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2013-1906-AIR-E; IDENTIFIER: RN102450756; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Texas Health and Safety Code, §382.085(b), Flexible Permit Numbers 49138, PSDTX768M1, PSDTX799, PSDTX802, PSDTX932, and PSDTX992M1, Special Conditions Number 1, and Federal Operating Permit Number O2046, by failing to prevent unauthorized emissions; PENALTY: \$87,500; Supplemental Environmental Project offset amount of \$43,750 applied to Southeast Texas

Regional Planning Commission; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(20) COMPANY: GREAT CONVENIENCE INCORPORATED dba H & A Food Mart; DOCKET NUMBER: 2013-1825-PST-E; IDENTIFIER: RN102411329; LOCATION: Hurst, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Greif Packaging LLC; DOCKET NUMBER: 2013-1751-MWD-E; IDENTIFIER: RN102079662; LOCATION: La Porte, Harris County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: Texas Pollutant Discharge Elimination System Permit Number WQ0013949001, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, 30 TAC §305.125(1), and TWC, §26.121(a)(1), by failing to comply with permitted effluent limits; PENALTY: \$4,050; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: Hai Nguyen dba Into Discount; DOCKET NUMBER: 2013-1592-PST-E; IDENTIFIER: RN102246055; LOCATION: Amarillo, Potter County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month; 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$8,880; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(23) COMPANY: Horseshoe Village MHC, LLC; DOCKET NUMBER: 2013-1708-MWD-E; IDENTIFIER: RN101715084; LOCATION: Williamson County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: TCEQ Permit Number WQ0013880001, Special Provisions Number 15 and 30 TAC §305.125(5), by failing to monitor the accumulation of solids in the septic tank once every six months; TCEQ Permit Number WQ0013880001, Effluent Limitations and Monitoring Requirements A, 30 TAC §305.125(1), and TWC, §26.121(a)(1), by failing to comply with permitted effluent limits; 30 TAC §305.125(5), by failing to properly operate and maintain the facility; TCEQ Permit Number WQ0013880001, Special Provisions Number 7 and 30 TAC §305.125(1), by failing to erect signs stating that the irrigation water is from a non-potable water supply; and TCEQ Permit Number WQ0013880001, Monitoring Requirements Numbers 3.b and 3.c and 30 TAC §305.125(1), by failing to maintain monitoring records at the facility and have them readily available for review by the TCEQ representative; PENALTY: \$8,126; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753-1808, (512) 339-2929.

(24) COMPANY: INVISTA S.a.r.l.; DOCKET NUMBER: 2013-1215-AIR-E; IDENTIFIER: RN102663671; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: chemical manufacturing plant; RULE

VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), Federal Operating Permit Numbers O1415 and O1902, Special Terms and Conditions Numbers 12 and 15, Air Permit Numbers 7186, 23271, and PSDTX1079, Special Conditions Number 1, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$11,238; Supplemental Environmental Project offset amount of \$4,495 applied to Texas Association of Resource Conservation and Development Areas, Incorporated; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(25) COMPANY: Irma Gonzalez dba Fiesta's Food Store & Meat Market 1; DOCKET NUMBER: 2013-1749-PST-E; IDENTIFIER: RN101680296; LOCATION: Alton, Hidalgo County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: \$2,438; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(26) COMPANY: JATIN ENTERPRISES, INCORPORATED dba Kwik N Easy Food Store; DOCKET NUMBER: 2013-2068-PST-E; IDENTIFIER: RN101382943; LOCATION: Houston, Harris County; 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 for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month; PENALTY: \$6,699; ENFORCEMENT COORDINATOR: Allyson Plantz, (512) 239-4593; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: John G. Hayes dba Mister Carwash 11; DOCKET NUMBER: 2013-1579-PST-E; IDENTIFIER: RN102380680; LOCATION: Sugar Land, Fort Bend County; TYPE OF FACILITY: oil change facility with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month; 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide release detection for the suction piping associated with tank Numbers 4, 5, and 6; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$5,141; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(28) COMPANY: Kathy Ringo and Richard Ringo dba K & R Contractors; DOCKET NUMBER: 2013-1877-MSW-E; IDENTIFIER: RN106878572; LOCATION: Timpson, Shelby County; TYPE OF FACILITY: an unauthorized municipal solid waste (MSW) site; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent unauthorized disposal of MSW; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 3870 Eastex Freeway Beaumont, Texas 77703-1892, (409) 898-3838.

(29) COMPANY: L&K KING CORPORATION dba Quick Track 26; DOCKET NUMBER: 2013-1957-PST-E; IDENTIFIER: RN102372505; LOCATION: Paris, Lamar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at

a frequency of at least once every month; and 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$6,692; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(30) COMPANY: Leonardo Fajardo, Jr.; DOCKET NUMBER: 2013-1867-LII-E; IDENTIFIER: RN104807482; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: landscape irrigation business; RULE VIOLATED: 30 TAC §344.35(d)(2), by failing to obtain a permit required to install an irrigation system; 30 TAC §344.70(a), by failing to display the irrigator's license number on both sides of all vehicles used in the performance of irrigation installation, maintenance, alteration, repair, or service; and 30 TAC §344.35(d)(9) and §344.62(o), by failing to have a licensed irrigator or irrigator technician on-site during the installation of an irrigation system; PENALTY: \$1,312; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(31) COMPANY: Lucky's Redi-Mix Co. LLC; DOCKET NUMBER: 2013-1575-AIR-E; IDENTIFIER: RN106172828; LOCATION: Benbrook, Tarrant County; TYPE OF FACILITY: concrete batch plant; RULE VIOLATED: 30 TAC §116.115(c), Texas Health and Safety Code (THSC), §382.085(b), and Standard Permit Registration Number 96891, Additional Requirements for Other Concrete Plants Number 6.E.ii., by failing to maintain sand and aggregate stockpile heights at least two feet below the height of the bunker walls; and 30 TAC §116.115(c), THSC, §382.085(b), and Standard Permit Registration Number 96891, Additional Requirements for Other Concrete Plants Number 6.C., by failing to pave all entry and exit roads and main traffic routes with a cohesive hard surface that can be maintained intact and be cleaned; PENALTY: \$3,575; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(32) COMPANY: McClain Feed Yard, Incorporated; DOCKET NUMBER: 2013-1000-AGR-E; IDENTIFIER: RN105889760; LOCATION: Hereford, Deaf Smith County; TYPE OF FACILITY: concentrated animal feeding operation; RULE VIOLATED: TCEQ General Permit Number TXG921265 Part III A.6.(a)(1) and (d)(1)(iii) and 30 TAC §321.38(e)(7)(A)(ii) and §321.36(c), by failing to construct, operate, and maintain retention control structures to contain all wastewater including the runoff and direct precipitation from the 25-year, 24-hour rainfall event; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(33) COMPANY: Mockingbird Midstream Gas Services, L.L.C.; DOCKET NUMBER: 2013-1536-AIR-E; IDENTIFIER: RN106153554 (Site 1), RN106501398 (Site 2), RN106449283 (Site 3), RN106388085 (Site 4), and RN106083900 (Site 5); LOCATION: Dilley, Cotulla, Pearsall, and Batesville, La Salle, Dimmit, and Zavala Counties; TYPE OF FACILITY: oil and gas facility; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain authorization for the source of air emissions prior to construction and operation; and 30 TAC §122.121 and §122.210(a) and THSC, §382.054 and §382.085(b), by failing to include all emission sources in the general operating permit (Site 5); PENALTY: \$22,729; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(34) COMPANY: MOIZ 786 INCORPORATED dba Vista Express; DOCKET NUMBER: 2013-0432-PST-E; IDENTIFIER: RN101722734; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month; and 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(35) COMPANY: Moulton Bless Corporation dba Moulton Grocery & Market; DOCKET NUMBER: 2013-1298-PST-E; IDENTIFIER: RN103027298; LOCATION: Moulton, Lavaca County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: \$2,438; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(36) COMPANY: Mushtaq Khan dba A&A Truck Stop; DOCKET NUMBER: 2013-2011-PST-E; IDENTIFIER: RN101988046; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; and 30 TAC §115.246(a)(4) and (6) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; PENALTY: \$4,363; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(37) COMPANY: OCI Beaumont LLC; DOCKET NUMBER: 2013-1427-AIR-E; IDENTIFIER: RN102559291; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: methanol and ammonia manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), New Source Review Permit Number 901, Special Conditions Number 1, and Federal Operating Permit Number O1645, Special Terms and Conditions Number 16 and General Terms and Conditions, by failing to prevent unauthorized emissions during an emissions event; and 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to report an emissions event within 24 hours of discovery; PENALTY: \$3,775; Supplemental Environmental Project offset amount of \$1,510 applied to Southeast Texas Regional Planning Commission; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(38) COMPANY: QUICK TRACK INCORPORATED dba Quick Track 25; DOCKET NUMBER: 2013-1959-PST-E; IDENTIFIER: RN101794410; LOCATION: Paris, Lamar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: \$4,687; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(39) COMPANY: Republic Corporation; DOCKET NUMBER: 2013-1670-AIR-E; IDENTIFIER: RN100219997; LOCATION: Marshall, Harrison County; TYPE OF FACILITY: cabinet part man-

ufacturing; RULE VIOLATED: 30 TAC §§113.340, 116.115(c), and 122.143(4), 40 Code of Federal Regulations (CFR) §63.807(c)(2), Texas Health and Safety Code (THSC), §382.085(b), Federal Operating Permit (FOP) Number O-1772, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 1(D), and New Source Review Permit Number 20486, Special Conditions Number 3, by failing to submit semi-annual compliance reports for the January 1, 2012 - December 31, 2012 reporting period; and 30 TAC §122.143(4), §122.146(1) and (2), THSC, §382.085(b), and FOP Number O-1772, GTC and STC Number 10, by failing to submit the permit compliance certification no later than 30 days after the end of the certification period; PENALTY: \$10,688; Supplemental Environmental Project offset amount of \$4,275 applied to Texas Congress of Parents and Teachers dba PTA; ENFORCEMENT COORDINATOR: Katie Hargrove, (512) 239-2569; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(40) COMPANY: ROUND ROCK FAITH MINISTRIES INCORPORATED; DOCKET NUMBER: 2013-1818-EAQ-E; IDENTIFIER: RN106763766; LOCATION: Round Rock, Williamson County; TYPE OF FACILITY: church; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of a Water Pollution Abatement Plan prior to beginning regulated activities over the Edwards Aquifer Recharge Zone; PENALTY: \$3,250; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753-1808, (512) 339-2929.

(41) COMPANY: Splendor Independent School District; DOCKET NUMBER: 2012-1644-MWD-E; IDENTIFIER: RN102096534 (Elementary School) and RN102097623 (High School); LOCATION: Montgomery County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011143001 and WQ0011143002, Effluent Limitations and Monitoring Requirements Numbers 2 and 3, by failing to comply with permitted effluent limits (Elementary and High School); 30 TAC §319.11(b) and TPDES Permit Number WQ0011143001 and WQ0011143002, Monitoring and Reporting Requirements Number 2.a, by failing to properly preserve effluent samples (Elementary and High School); 30 TAC §305.125(1), and TPDES Permit Number WQ0011143001, Monitoring and Reporting Requirements Number 7.c, by failing to timely report in writing effluent violations which deviate from the permitted limit by more than 40% to the Regional Office and the Enforcement Division within five working days of becoming aware of the noncompliance (Elementary School); 30 TAC §319.11(b) and TPDES Permit Number WQ0011143001, Monitoring and Reporting Requirements Number 2.a, by failing to properly preserve effluent samples (High School); 30 TAC §305.125(19) and TPDES Permit Number WQ0011143001 and WQ0011143002, Monitoring and Reporting Requirements Numbers 2.a and 3.a, by failing to accurately complete the discharge monitoring report (Elementary and High School); 30 TAC §319.11(b) and (c) and TPDES Permit Number WQ0011143001, Monitoring and Reporting Requirements Number 2.a, by failing to comply with specified test procedures (Elementary School); 30 TAC §305.125(1) and §319.5(b), and Texas Pollutant Discharge Elimination System Permit Number WQ0011143002, Effluent Limitations and Monitoring Requirements Number 1, by failing to collect and analyze grab samples for ammonia nitrogen, carbonaceous biochemical oxygen demand, and total suspended solids at the required frequency (High School); 30 TAC §319.11(b) and (c) and TPDES Permit Number WQ0011143002, Monitoring and Reporting Requirements Number 2.a, by failing to comply with specified test procedures (High School); and 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0011143002, Operational Requirements Number 1, by failing to ensure that the facility and all its systems of collection,

treatment, and disposal are properly operated and maintained (High School); PENALTY: \$18,655; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(42) COMPANY: Spygoat, Incorporated dba Econo Lube N Tune & Brakes; DOCKET NUMBER: 2013-1422-PST-E; IDENTIFIER: RN101639904; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: oil change and lube facility; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of a petroleum underground storage tank (UST); 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the UST for release at a frequency of at least once every month; 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide release detection for the gravity piping associated with the UST system; and 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system; PENALTY: \$9,406; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(43) COMPANY: TITLI LLC dba Gino's Meat Market; DOCKET NUMBER: 2013-1743-PST-E; IDENTIFIER: RN101897890; LOCATION: Pharr, Hidalgo County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month; 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system; PENALTY: \$7,625; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(44) COMPANY: Virginia Franklin Fuller dba Franklin Water System 1; DOCKET NUMBER: 2013-1558-PWS-E; IDENTIFIER: RN102817038; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: mobile home park with a public water supply; RULE VIOLATED: 30 TAC §290.117(c)(2)(A) and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites and provide the results to the executive director; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and failed to submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; and 30 TAC §290.122(c)(2)(A), by failing to post public notifications regarding the failure to submit a Disinfectant Level Quarterly Operating Report for the third quarter of 2011, the failure to provide the results of Stage 1 disinfectant byproducts sampling for the 2011 monitoring period, and the failure to provide the results of nitrates sampling for the 2011 monitoring period; PENALTY: \$3,443; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(45) COMPANY: VVMH, INCORPORATED dba Texs T; DOCKET NUMBER: 2013-1684-PST-E; IDENTIFIER: RN105027569; LOCATION: Commerce, Hunt County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c), (c)(4)(A)(vii), and (5)(B)(ii), by failing to obtain an underground storage tank (UST) delivery certificate by submitting a

properly completed UST registration and self-certification form at least 30 days after the ownership change; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: \$2,995; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(46) COMPANY: William Donald Smith; DOCKET NUMBER: 2013-1678-MWD-E; IDENTIFIER: RN101701555; LOCATION: Houston, Harris County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013770001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations for the monitoring period ending May 31, 2013 - June 30, 2013; PENALTY: \$6,500; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(47) COMPANY: YAMUNA CORPORATION dba C & C Discount; DOCKET NUMBER: 2013-1643-PST-E; IDENTIFIER: RN101553642; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(48) COMPANY: ZK Petroleum Co., L.L.C.; DOCKET NUMBER: 2013-1692-AIR-E; IDENTIFIER: RN106881667; LOCATION: Missouri City, Fort Bend County; TYPE OF FACILITY: oil well site; RULE VIOLATED: 30 TAC §101.10(a)(1) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit emissions inventories for the calendar years 2009-2012; and 30 TAC §106.8(c)(1) and (2) and THSC, §382.085(b), by failing to maintain the required records; PENALTY: \$5,175; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201400312

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 27, 2014



Notice of Water Quality Applications

The following notices were issued on January 17, 2014, through January 24, 2014.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

SOUTHWESTERN ELECTRIC POWER COMPANY which operates AEP Wilkes Power Plant, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0001331000, which authorizes the discharge of previously monitored effluents

(once-through cooling water, low volume waste, and metal cleaning waste) and cooling pond water on an intermittent and flow-variable basis via Outfall 001, previously monitored effluents (low volume waste) and once-through cooling water at a daily average flow not to exceed 550,000,000 gallons per day via Outfall 002, low volume waste on a flow-variable basis via internal Outfall 101, and metal cleaning waste on a flow-variable basis via Outfall 003. The facility is located at 1707 Wilkes Power Plant Road, adjacent to Johnson Creek Reservoir, approximately three miles northwest of the intersection of State Highway 49 and State Highway 1969, approximately five miles south of the City of Avinger, Marion County, Texas 75630.

CITY OF BRYAN has applied for a renewal of TPDES Permit No. WQ0010426001 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 8,000,000 gallons per day. The facility is located at 300 Park Road, Bryan, approximately 3,800 feet northeast of the intersection of East 29th Street and Farm-to-Market Road 60 (University Drive) and approximately 3,400 feet southwest of the intersection of State Highway 6 and Farm-to-Market Road 60 in Brazos County, Texas 77802.

CITY OF GRAPEVINE has applied for a renewal of TPDES Permit No. WQ0010486002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 5,750,000 gallons per day. The facility is located at 602 Shady Brook Drive, immediately northwest of the intersection of North Scribner and Shady Brook Road in the City of Grapevine in Tarrant County, Texas 76051.

TEXAS A&M UNIVERSITY has applied for a renewal of TPDES Permit No. WQ0010968003, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. The current permit authorizes the land application of sewage sludge for beneficial use on 59 acres. The facility and the land application site are located at 9685 White's Creek Road, College Station, approximately 14,000 feet south of the intersection of Farm-to-Market Road 60 and Farm-to-Market Road 2818, 11,000 feet southwest of Farm-to-Market Road 2818, and 9,000 feet southeast of Farm-to-Market Road 60 in Brazos County, Texas 77845.

MCADOO WATER SUPPLY CORPORATION has applied for a renewal of Texas Commission on Environmental Quality (TCEQ) Permit No. WQ0014145001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 7,000 gallons per day via evaporation. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day via evaporation in the interim phase and 7,000 gallons per day via evaporation in the final phase. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 0.4 mile north of the intersection of Farm-to-Market Roads 193 and 264 near the community of McAdoo in Dickens County, Texas 79243.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided above, WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

UNITED STATES GYPSUM COMPANY which operates the Galena Park Plant, a gypsum wallboard and wallboard paper manufacturing facility, has applied for a minor amendment to TPDES Permit No. WQ0000353000 to authorize the addition of a chlorination/de-chlorination system to provide disinfection of the effluent at the existing lagoons prior to discharge at Outfall 001. The existing permit authorizes the discharge of treated process wastewater, treated domestic wastewater, stormwater, and boiler blowdown at a daily average flow not to exceed 375,000 gallons per day via Outfall 001. The facility is located at 1201 Mayo Shell Road, approximately 1.25 miles east of Loop 610

East and 0.5 mile south of Clinton Drive in the City of Galena Park, Harris County, Texas 77547.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201400325

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 29, 2014



Notice of Water Rights Application

Notice issued January 23, 2014.

APPLICATION NO. 21-2464A; The City of Corpus Christi, P.O. Box 9277, Corpus Christi, Texas 78469-9277 (Owner or Applicant) seeks to amend Certificate of Adjudication No. 21-2464 (Certificate) to authorize the diversion from anywhere along the perimeter of Lake Corpus Christi and Calallen Reservoir on the Nueces River, Nueces River Basin, in Jim Wells and San Patricio Counties and to add multiple uses to all of the authorized water under the Certificate. The application was received on February 21, 2012. Additional information was received on March 12, and October 18, 2012. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on June 7, 2013. The Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would include special conditions including, but not limited to, contacting the South Texas Watermaster prior to diversion. The application, technical memoranda, and Executive Director's draft amendment are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F, Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by February 10, 2014.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement [I/we] request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to

the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201400326

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 29, 2014



Update to the Water Quality Management Plan

The Texas Commission on Environmental Quality (TCEQ) requests comments from the public on the draft January 2014 Update to the Water Quality Management Plan (WQMP) for the State of Texas.

Download the draft January 2014 WQMP Update at http://www.tceq.texas.gov/permitting/wqmp/WQmanagement_updates.html or view a printed copy at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

The WQMP is developed and promulgated in accordance with the requirements of Federal Clean Water Act, Section 208. The draft update includes projected effluent limits of specific domestic dischargers, which may be useful for planning in future permit actions. The draft update may also contain service area populations for listed wastewater treatment facilities, designated management agency information, and total maximum daily load (TMDL) revisions.

Once the commission certifies a WQMP update, it is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission.

Deadline

All comments must be received at the TCEQ no later than 5:00 p.m. on March 10, 2014.

How to Submit Comments

Comments must be submitted in writing to:

Nancy Vignali

Texas Commission on Environmental Quality

Water Quality Division, MC 150

P.O. Box 13087

Austin, Texas 78711-3087

Comments may also be faxed to (512) 239-4420, but must be followed up with written comments by mail within three working days of the fax date or by the comment deadline, whichever is sooner.

For further information, or questions, please contact Ms. Vignali at (512) 239-1303 or by email at Nancy.Vignali@tceq.texas.gov.

TRD-201400314

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 27, 2014

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Texas Facilities Commission

Request for Proposals #303-5-20424

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General, announces the issuance of Request for Proposals (RFP) #303-5-20424. TFC seeks a five (5) or ten (10) year lease of approximately 2,770 square feet of office space in Denton, Texas.

The deadline for questions is February 19, 2014, and the deadline for proposals is February 26, 2014, at 3:00 p.m. The award date is March 26, 2014. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=109791.

TRD-201400332
Kay Molina
General Counsel
Texas Facilities Commission
Filed: January 29, 2014

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Request for Proposals #303-5-20425

The Texas Facilities Commission (TFC), on behalf of the Comptroller of Public Accounts, announces the issuance of Request for Proposals (RFP) #303-5-20425. TFC seeks a five (5) or ten (10) year lease of approximately 1,828 square feet of office space in Bryan, Brazos County, Texas.

The deadline for questions is February 18, 2014, and the deadline for proposals is March 4, 2014, at 3:00 p.m. The award date is April 16, 2014. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=109793.

TRD-201400333
Kay Molina
General Counsel
Texas Facilities Commission
Filed: January 29, 2014

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Department of State Health Services

Amendment to the Schedules of Controlled Substances

This amendment to the Schedules of Controlled Substances was signed by the Commissioner of the Department of State Health Services on January 15, 2014, and will become effective 21 days after the date of publication of this notice in the *Texas Register*.

The Deputy Administrator of the Drug Enforcement Administration (DEA) issued a final order to temporarily place three phenethylamines into Schedule I of the federal Controlled Substances Act. These substances are 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (Other names: 25I-NBOMe; 2C-I-NBOMe; 25I; Cimbi-5); 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (Other names: 25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82); and, 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (Other names: 25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36) including their optical, positional, and geometric isomers, salts and salts of isomers.

This temporary scheduling action is based on findings that the placement of these synthetic phenethylamines and their optical, positional, and geometric isomers, salts and salts of isomers into Schedule I of the federal Controlled Substances Act is necessary to avoid an imminent hazard to the public safety. The final order was published in the *Federal Register*, Volume 78, Number 221, pages 68716-68719 and was effective November 15, 2013.

Pursuant to §481.034(g), as amended by the 75th legislature, of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, at least thirty-one days have expired since notice of the above referenced action was published in the *Federal Register*; and, in the capacity as Commissioner of the Department of State Health Services, David L. Lakey, M.D. hereby orders that the substances 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (Other names: 25I-NBOMe; 2C-I-NBOMe; 25I; Cimbi-5); 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (Other names: 25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82), and 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (Other names: 25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36) [hereinafter 25I-NBOMe, 25C-NBOMe; and 25B-NBOMe] including their optical, positional, and geometric isomers, salts and salts of isomers be placed into Schedule I.

SCHEDULE I

Schedule I consists of:

Schedule I opiates

Schedule I opium derivatives

Schedule I hallucinogenic substances

Schedule I stimulants

Schedule I depressants

Schedule I Cannabimimetic agents

Schedule I temporarily listed substances

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances or that contains any of the substance's opti-

cal, positional, and geometric isomers, salts and salts of isomers if the existence of such substances is possible within the specific chemical designation:

1. (1-pentyl-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (Other names: UR-144 and 1-pentyl-3-(2,2,3,3-tetramethylcyclopropyl)indole);

2. [1-(5-fluoro-pentyl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (Other names: 5-fluoro-UR-144 and 5-F-UR-144 and XLR11 and 1-(5-fluoro-pentyl)-3-(2,2,3,3-tetramethylcyclopropyl)indole);

3. N-(1-adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide (Other names: APINACA, AKB48);

*4. 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (Other names: 25I-NBOMe; 2C-I-NBOMe; 25I; Cimbi-5);

*5. 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (Other names: 25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82); and

*6. 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (Other names: 25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36).

Changes to the schedules are designated by a single asterisk (*)

TRD-201400226

Lisa Hernandez

General Counsel

Department of State Health Services

Filed: January 22, 2014



Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Bishop	Ticona Polymers, Inc.	L02441	Bishop	50	12/31/13
Glen Rose	Somervell County Hospital District dba Glen Rose Medical Center	L06607	Glen Rose	00	01/13/14
Houston	U.S. Steel Tubular Products, Inc.	L06604	Houston	00	01/09/14
Pampa	Hunting Titan, Inc.	L06610	Pampa	00	01/16/14
Sugar Land	Bitswave, Inc.	L06606	Sugar Land	00	01/13/14
Sunset	New Ventures Leasing, L.L.C.	L06609	Sunset	00	01/16/14
Throughout TX	One Source Industrial Services, L.L.C.	L06605	Odessa	00	01/10/14
Throughout TX	Advanced Inspection Technologies, L.L.C.	L06608	Spring	00	01/14/14

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Austin	The University of Texas at Austin	L00485	Austin	89	01/10/14
Austin	Cardinal Health	L02117	Austin	88	01/07/14
Austin	Texas Oncology, P.A. dba South Austin Cancer Center	L05108	Austin	29	01/16/14
Corpus Christi	Cardinal Health	L04043	Corpus Christi	45	01/09/14
Corpus Christi	Coastal Cardiology Association	L04754	Corpus Christi	24	01/10/14
Dallas	Medi Physics, Inc. dba G.E. Healthcare	L05529	Dallas	35	01/08/14
Dallas	Cardinal Health	L05610	Dallas	26	01/08/14
Dallas	Crown Imaging, L.L.C.	L06223	Dallas	06	01/06/14
Dallas	Health Texas Provider Network dba Dallas Heart Group	L06501	Dallas	05	01/10/14
Dallas	Healthtexas Provider Network dba Cardiology Consultants of Texas	L06572	Dallas	02	01/10/14
Decatur	Wise Regional Health System	L02382	Decatur	41	01/15/14
Fort Worth	Maxum Health Services Corporation dba Insight Diagnostic Center - Fifth Avenue	L05887	Fort Worth	08	01/07/14
Houston	The Methodist Hospital dba Houston Methodist	L00457	Houston	194	01/08/14
Houston	The University of Texas M.D. Anderson Cancer Center	L00466	Houston	148	01/03/14
Houston	Memorial Hermann Health System dba Memorial Hermann Hospital The Woodlands	L03772	Houston	107	01/16/14
Houston	Cardinal Health	L05536	Houston	43	01/08/14
Houston	Allied Wireline Services, L.L.C.	L06374	Houston	07	01/10/14
La Porte	Invista Sarl	L05719	La Porte	07	01/16/14
Longview	Longview Medical Center, L.P. dba Longview Regional Medical Center	L02882	Longview	44	01/14/14
Lubbock	Covenant Health System dba Joe Arrington Cancer Research and Treatment Center	L04881	Lubbock	62	01/10/14
Lubbock	Radiation Oncology of the South Plains, P.A. dba Lubbock Imaging Center	L05418	Lubbock	18	01/13/14
Lubbock	Radiation Oncology of the South Plains, P.A. dba Lubbock Imaging Center	L05418	Lubbock	19	01/16/14
Lubbock	Lubbock Heritage Hospital, L.L.C. dba Grace Medical Center	L06040	Lubbock	07	01/08/14
Lubbock	Texas Tech University Health Sciences Center	L06567	Lubbock	01	01/08/14

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
Sherman	Sherman/Grayson Hospital, L.L.C. dba Texas Health Presbyterian Hospital - WNJ	L06354	Sherman	11	01/15/14
Sugar Land	Houston Cardiovascular Consultants, L.L.P. dba Houston Cardiovascular Imaging	L05350	Sugar Land	19	01/08/14
Sugar Land	Fort Bend Heart Center Ltd., L.L.P.	L05678	Sugar Land	10	01/15/14
Sugar Land	Texas Oncology, P.A. dba Texas Oncology Cancer Center Sugar Land	L05816	Sugar Land	13	01/15/14
Throughout TX	Weatherford International, L.L.C.	L04286	Benbrook	102	01/16/14
Throughout TX	Sterigenics U.S., L.L.C.	L03851	Fort Worth	43	01/06/14
Throughout TX	Bonded Inspections, Inc.	L00693	Garland	89	01/07/14
Throughout TX	Associated Testing Laboratories Inc.	L01553	Houston	30	01/10/14
Throughout TX	Gray Wireline Service, Inc.	L03541	Houston	46	01/08/14
Throughout TX	Gray Wireline Service, Inc.	L03541	Houston	47	01/16/14
Throughout TX	Savoy Technical Services, Inc.	L06502	Houston	03	01/16/14
Throughout TX	Industrial Nuclear Company, Inc.	L04508	La Porte	16	01/06/14
Throughout TX	Weld Spec, Inc.	L05426	Lumberton	99	01/16/14
Throughout TX	Professional Service Industries, Inc.	L03924	McKinney	28	01/16/14
Throughout TX	Petrochem Inspection Services, Inc.	L04460	Pasadena	119	01/15/14
Throughout TX	Furmanite America, Inc.	L06554	Port Lavaca	06	01/09/14
Throughout TX	Raba-Kistner Consultants, Inc. dba Raba-Kistner-Bryttest Consultants, Inc.	L01571	San Antonio	76	01/15/14
Throughout TX	Scott and White Memorial Hospital and Scott Sherwood and Brindley Foundation dba Scott and White Memorial Hospital	L00331	Temple	95	01/10/14
Tyler	The University of Texas Health Center at Tyler	L01796	Tyler	69	01/08/14
Victoria	Invista Sarl	L00386	Victoria	88	01/09/14
Wichita Falls	United Regional Health Care System, Inc.	L00350	Wichita Falls	115	01/15/14

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Amarillo	Coffee Memorial Blood Center	L04705	Amarillo	10	01/07/14
Cleveland	Gamepudi V. Prasad, M.D., P.A.	L05629	Cleveland	03	01/10/14
Corpus Christi	Thomas Spann Clinic, P.A.	L05733	Corpus Christi	05	01/10/14
Fort Worth	Cook Childrens Medical Center	L04587	Fort Worth	16	01/07/14
Houston	TH Healthcare, Ltd. dba Park Plaza Hospital and Medical Center	L03612	Houston	09	01/10/14
Houston	Comprehensive Heart Care, P.A.	L05710	Houston	10	01/15/14
McAllen	McAllen Hospitals, L.P. dba South Texas Health System	L01713	McAllen	94	01/09/14
Nederland	Murlidhar A. Amin, M.D., P.A.	L05735	Nederland	05	01/15/14
Sugar Land	Stillmeadow, Inc.	L04497	Sugar Land	15	01/13/14
Throughout TX	Capitan Corporation	L05824	Midland	10	01/14/14

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Glen Rose	Somervell County Hospital dba Glen Rose Medical Center	L06380	Glen Rose	01	01/13/14
Houston	Rice University Dept of Earth Sciences MS-126	L05986	Houston	02	01/14/14
Orange	Cardinal Health 414, L.L.C. dba Cardinal Health Nuclear Pharmacy Services	L04785	Orange	39	01/06/14
Weslaco	R.G.V. Heart Specialists, L.L.P.	L05554	Weslaco	05	01/09/14

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201400239
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: January 23, 2014

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Texas Department of Housing and Community Affairs

Notice of Public Hearing for the Program Year 2014
Weatherization Assistance Program State Plan

The Texas Department of Housing and Community Affairs (TDHCA) will hold a public hearing to receive comments on the Program Year (PY) 2014 Texas Weatherization Assistance Program (WAP) State Plan. The hearing will take place at the following time and location:

Monday, February 10, 2014

11:00 a.m.

TDHCA Headquarters

221 East 11th Street

Conference Room 116

Austin, Texas 78701

At the hearing, a representative from TDHCA will accept comments on PY 2014 Texas WAP State Plan.

Local officials and citizens are encouraged to participate in the hearing process. Written and oral comments received will be used to finalize the PY 2014 Texas WAP State Plan and Application. Written comments from those who cannot attend the hearing in person may be provided by the close of business at 5:00 p.m. on Monday, February 10, 2014, to Ms. Cate Taylor, Community Affairs Division, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711 or by electronic mail to cate.taylor@tdhca.state.tx.us. A copy of the PY 2014 Texas WAP State Plan may be obtained through TDHCA's web site at <http://www.tdhca.state.tx.us/community-affairs/wap/index.htm> or by calling Ms. Taylor at (512) 475-1435 or by writing to Ms. Taylor at the TDHCA address given above.

Individuals who require auxiliary aids or services for this meeting should contact Ms. Gina Esteves, ADA responsible employee, at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least two (2) days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Jorge Reyes, (512) 475-4577 at least three (3) days before the meeting so that appropriate arrangements can be made.

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.

TRD-201400311
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 27, 2014

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Request for Proposals for Organizational Assessment

SUMMARY.

The Texas Department of Housing and Community Affairs is requesting proposals to provide in-depth organizational assessment of state Subrecipients. The person/organization responding to this Request for Proposals (RFP) may be referred to as the "respondent" or the "contractor" and such terms may be used beginning with either upper case or lower case letter. The Texas Department of Housing and Community Affairs (may be referred to as the Department, TDHCA, or agency) is issuing this request for proposals to procure one or more nonprofit contractors to provide organizational assessments of and possible associated technical assistance to awardees of programs funded through the Department, primarily nonprofit organizations funding through the Community Affairs programs. The respondent(s) will be available as needed to travel to organizations or entities identified by TDHCA to assess overall organizational operations (management, fiscal, board, etc.), create an assessment report which will include a full description of the assessment, any conclusions and/or findings of deficiency, recommendations, and needed action to be taken. The purpose of the assessment is to identify whether policies, practices, systems and controls of the organization or entity meet commonly accepted management practices that ensure sound management of federal and/or state resources. In the case of community action agencies, this will include determining whether the policies and procedures of the organization or entity meet, at minimum, or exceed the selected practices from the collection of best practices published by the Community Action Partnership in its 2012 Standards of Excellence, located at: <http://compa.nonprofitsoapbox.com/storage/cap/documents/Pathways/2012-standards.pdf>. Organizations that have the desire and the capacity to provide the organizational assessment services indicated above as well as the associated technical assistance may include such information in the proposal, however the desire and capacity to

provide the technical assistance is not a requirement for submission of a proposal.

POSTING DATE AND DEADLINE FOR SUBMISSION.

The RFP was posted on THURSDAY, JANUARY 23, 2014. The deadline for submission in response to the RFP is 2:00 p.m., Central Time, FRIDAY, FEBRUARY 21, 2014. No submittal received after the deadline will be considered. No incomplete, unsigned, or late qualification summaries will be accepted after the deadline, unless the Department determines, in its sole discretion that it is in the best interest of TDHCA to do so.

Individuals or firms interested in submitting a proposal should visit our website at: <http://www.tdhca.state.tx.us/> under the "What's New" section or visit <http://esbd.cpa.state.tx.us/>, for a complete copy of the RFP. Throughout the procurement process, all questions relating to this RFP must be submitted to the Department in writing to Julie Dumbeck at julie.dumbeck@tdhca.state.tx.us.

PLACE AND METHOD OF QUALIFICATION DELIVERY.

Proposals shall be delivered to:

Texas Department of Housing and Community Affairs

Attention: Purchasing #332-RFP14-1005

Mailing Address:

P.O. Box 13941

Austin, Texas 78711-3941

Physical Address for Overnight Carriers:

221 East 11th Street

Austin, Texas 78701-2410

(512) 475-3991

TRD-201400310

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Filed: January 27, 2014

Texas Department of Insurance

Company Licensing

Application to change the name of METLIFE INSURANCE COMPANY OF CONNECTICUT to METLIFE INSURANCE COMPANY USA, a foreign life, accident and/or health company. The home office is in Bloomfield, Connecticut.

Application to change the name of STONEBRIDGE CASUALTY INSURANCE COMPANY to TRANSAMERICA CASUALTY INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Columbus, Ohio.

Application to change the name of MONUMENTAL LIFE INSURANCE COMPANY to TRANSAMERICA RESERVE LIFE INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Cedar Rapids, Iowa.

Application to do business in the State of Texas by TODAY'S OPTIONS OF TEXAS, INC., a domestic Health Maintenance Organization. The home office is in Houston, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201400316

Sara Waitt

General Counsel

Texas Department of Insurance

Filed: January 29, 2014

Texas Lottery Commission

Instant Game Number 1588 "7"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1588 is "7". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1588 shall be \$5.00 per Ticket.

1.2 Definitions in Instant Game No. 1588.

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, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 7 SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$40.00, \$50.00, \$100, \$500, \$1,000 and \$100,000.

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. 1588 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
38	TRET
39	TRNI
40	FRTY
7 SYMBOL	WIN
\$5.00	FIVE\$
\$10.00	TENS\$
\$15.00	FIFTN
\$20.00	TWENTY
\$40.00	FORTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$100,000	HUN THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$1,000 or \$100,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1588), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1588-0000001-001.

K. Pack - A Pack of "7" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. 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.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "7" Instant Game No. 1588 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 "7" Instant Game is determined once the latex on the Ticket is scratched off to expose 40 (forty) Play Symbols. A player must scratch the entire play area to reveal 20 Play Symbols. If a player reveals a "7" Play Symbol, the player wins the prize for that symbol. 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 40 (forty) 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 40 (forty) 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 40 (forty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 40 (forty) 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 Texas 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 in a Pack will not have identical play data, spot for spot.

B. No more than three matching non-winning Prize Symbols on a Ticket.

C. The top Prize Symbol will appear at least once on every Ticket unless restricted by other parameters, play action or prize structure.

D. A non-winning Prize Symbol will never be the same as a winning Prize Symbol.

E. No matching non-winning Play Symbols on a Ticket.

F. The "7" (win) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "7" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$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, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$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 "7" Instant Game prize of \$1,000 or \$100,000, 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 "7" 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 Texas Lottery is not responsible for Tickets lost in the mail. 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:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Texas Government Code, §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family 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 under \$600 from the "7" 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 \$600 or more from the "7" 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, §466.408. Any rights to a prize that is 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 16,080,000 Tickets in the Instant Game No. 1588. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1588 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	1,500,800	10.71
\$10	1,608,000	10.00
\$15	428,800	37.50
\$20	536,000	30.00
\$50	46,900	342.86
\$100	56,012	287.08
\$500	8,308	1,935.48
\$1,000	460	34,956.52
\$100,000	14	1,148,571.43

*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 3.84. 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 No. 1588 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

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 No. 1588, 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-201400296
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: January 27, 2014



Instant Game Number 1614 "On the Money"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1614 is "ON THE MONEY". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1614 shall be \$2.00 per Ticket.

1.2 Definitions in Instant Game No. 1614.

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: 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, \$2.00, \$5.00, \$10.00, \$15.00, \$20.00, \$30.00, \$50.00, \$100, \$1,000 or \$25,000.

D. Play Symbols 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. 1614 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
\$2.00	TWO\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$30.00	THIRTY
\$50.00	FIFTY
\$100	ONE HUND
\$1,000	ONE THOU
\$25,000	25 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number

is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$5.00, \$6.00, \$10.00, \$15.00, \$16.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$30.00, \$50.00 or \$100.

H. High-Tier Prize - A prize of \$1,000 or \$25,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1614), 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: 1614-0000001-001.

K. Pack - A Pack of "ON THE MONEY" Instant Game Tickets contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

L. 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.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "ON THE MONEY" Instant Game No. 1614 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 "ON THE MONEY" Instant Game is determined once the latex on the Ticket is scratched off to expose 18 (eighteen) Play Symbols. A player must scratch the entire play area to reveal 2 WINNING NUMBERS Play Symbols and 8 YOUR NUMBERS Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to either WINNING NUMBER Play Symbol, the player wins the prize for that 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 18 (eighteen) 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 18 (eighteen) 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 18 (eighteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 18 (eighteen) 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 Texas 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, within a Pack, will not have identical patterns of either Play Symbols or Prize Symbols.

B. A Ticket will win as indicated by the prize structure.

C. A Ticket can win up to eight (8) times.

D. No duplicate non-winning YOUR NUMBERS on a Ticket.

E. Non-Winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

F. Non-Winning Tickets will not contain more than two identical Prize Symbols.

G. No duplicate WINNING NUMBERS Play Symbols will appear on a Ticket.

H. YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e. 5 and \$5, 10 and \$10, 20 and \$20, 30 and \$30).

2.3 Procedure for Claiming Prizes.

A. To claim a "ON THE MONEY" Instant Game prize of \$2.00, \$5.00, \$6.00, \$10.00, \$15.00, \$16.00, \$20.00, \$30.00, \$50.00 or \$100, 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, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$50.00 or \$100 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 "ON THE MONEY" Instant Game prize of \$1,000 or \$25,000, 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 "ON THE MONEY" 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 Texas Lottery is not responsible for Tickets lost in the mail. 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:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Texas Government Code, §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family 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 under \$600 from the "ON THE MONEY" 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 \$600 or more from the "ON THE MONEY" 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, §466.408. Any rights to a prize that is 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 6,000,000 Tickets in the Instant Game No. 1614. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1614 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	624,000	9.62
\$5	304,000	19.74
\$6	144,000	41.67
\$10	192,000	31.25
\$15	16,000	375.00
\$16	48,000	125.00
\$20	32,000	187.50
\$30	4,350	1,379.31
\$50	3,075	1,951.22
\$100	1,500	4,000.00
\$1,000	16	375,000.00
\$25,000	6	1,000,000.00

*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 4.38. 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 No. 1614 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

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 No. 1614, 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-201400297
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: January 27, 2014

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Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on January 23, 2014, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cequel III Communications I, LLC d/b/a Suddenlink Communications for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 42189.

The requested amendment is to amend its service area footprint to delete the service area of Waller, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing- and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 42189.

TRD-201400315
 Adriana A. Gonzales
 Rules Coordinator
 Public Utility Commission of Texas
 Filed: January 29, 2014

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Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on January 16, 2014, for an amendment to certificated service area for a service area exception within Dallas County, Texas.

Docket Style and Number: Application of Garland Power & Light to Amend a Certificate of Convenience and Necessity for Electric Service Area Exception within Dallas County, Docket Number 42165.

The Application: Garland Power & Light (GP&L) filed an application for a service area boundary exception to allow GP&L to provide service to a specific customer located within the certificated service area of Oncor Electric Delivery Company, LLC (Oncor). Oncor has provided an affidavit of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than February 14, 2014, by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by

phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 42165.

TRD-201400240
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 23, 2014



Public Notice of Workshop

Staff of the Public Utility Commission of Texas (PUC) will hold a workshop regarding Project No. 42190, *Migration of Rules Related to Water Utilities from the TCEQ (Chapter 291) to the PUC (New Chapter 24)*, Project No. 42191, *Amendments to P.U.C. Procedural Rules Related to the Migration of Water Utilities from TCEQ to the PUC*, and Project No. 42192, *Migration of Forms Related to Water Utilities from the TCEQ to the PUC*, on Wednesday, February 26, 2014, at 10:00 a.m. The workshop will be held in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701.

The purpose of the workshop will be for the PUC staff to discuss and for interested stakeholders to provide input on staff's plan for proposed changes to applicable substantive and procedural rules as well as forms to prepare for the transfer of the water rate and Certificate of Convenience and Necessity programs from the Texas Commission on Environmental Quality to the PUC that will occur on September 1, 2014.

Prior to the workshop, commission staff will file a copy of its proposed plan available by no later than Friday, February 14, 2014, in Central Records of the PUC in Project Nos. 42190, 42191, and 42192. Staff's proposed plan will also be available on the commission's webpage at www.puc.texas.gov.

Questions concerning the workshop or this notice should be referred to Thomas Gleeson, Project Manager, (512) 936-7287 or at water@puc.texas.gov. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1.

TRD-201400335
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 29, 2014



Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Services

The City of Killeen through its agent, the Texas Department of Transportation (TxDOT), intends to engage an Aviation Professional Services Firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualifications for professional services as described below:

Airport Sponsor: City of Killeen, Killeen Skylark Field, TxDOT CSJ No. 14MPKILEN.

Scope: Prepare an Airport Master Plan which includes, but is not limited to information regarding existing and future conditions, proposed facility development to meet existing and future demand, constraints to

develop, anticipated capital needs, financial considerations, management structure and options, as well as an updated Airport Layout Plan. The Airport Master Plan should be tailored to the individual needs of the airport.

The HUB goal is set at 0%. The TxDOT Project Manager is Michelle Hannah.

Interested firms shall utilize the Form AVN-551, titled "Qualifications for Aviation Planning Services." 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 at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html>. 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. Qualifications shall not exceed the number of pages in the AVN-551 template. The AVN-551 format consists of eight 8 1/2" x 11" pages of data plus one optional illustration page. The optional illustration page shall be no larger than 11" x 17" and may be folded to an 8 1/2" x 11" size. A prime provider may only submit one AVN-551. If a prime provider submits more than one AVN-551, that provider will be disqualified. AVN-551s shall be stapled but not bound or folded in any other fashion. AVN-551s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

Please note:

SEVEN completed copies of Form AVN-551 **must be received** by TxDOT, Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than March 11, 2014, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Beverly Longfellow.

The consultant selection committee will be composed of local government members and one Aviation Division staff member. The final selection by the committee will generally be made following the completion of review of AVN-551s. The committee will review all AVN-551s and rate and rank each. The evaluation criteria for airport planning projects can be found at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html>. 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 for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Beverly Longfellow, Grant Manager, or Michelle Hannah, Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-201400324
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: January 29, 2014



Public Hearing Notice - Statewide Transportation Improvement Program

The Texas Department of Transportation (department) will hold a public hearing on Monday, March 3, 2014, at 10:00 a.m. at 200 East Riverside Drive, Room 1A-2, in Austin, Texas, to receive public comments on the February 2014 Quarterly Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2013-2016.

The STIP reflects the federally funded transportation projects in the FY 2013-2016 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Beaumont, Dallas-Fort Worth, El Paso, and Houston. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP and STIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.). Section 134 requires an MPO to develop its TIP in cooperation with the state and affected public transit operators and to provide an opportunity for interested parties to participate in the development of the program. Section 135 requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

A copy of the proposed February 2014 Quarterly Revisions to the FY 2013-2016 STIP will be available for review, at the time the notice of hearing is published, at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, or (512) 486-5033, and on the department's website at: <http://www.txdot.gov/government/programs/stips.html>.

Persons wishing to speak at the hearing may register in advance by notifying Lori Morel, Transportation Planning and Programming Division, at (512) 486-5033 not later than Friday, February 28, 2013, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to

strict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Transportation Planning and Programming Division, at 118 East Riverside Drive, Austin, Texas 78704-1205, (512) 486-5038. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to attend the hearing may submit comments regarding the proposed February 2014 Quarterly Revisions to the FY 2013-2016 STIP to Marc Williams, P.E., Director of Planning, P.O. Box 149217, Austin, Texas 78714-9217. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by 4:00 p.m. on Monday, March 10, 2014.

TRD-201400323

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: January 29, 2014



Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and 43 Texas Administrative Code §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects. For information regarding actions and times for aviation public hearings, please go to the following website:

www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.

Or visit www.txdot.gov, How Do I Find Hearings and Meetings, choose Hearings and Meetings, and then choose Schedule. Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PILOT.

TRD-201400322

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: January 29, 2014





*Michael Smith
11th Grade*

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 39 (2014) is cited as follows: 39 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 “39 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 39 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 at: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document

format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

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

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (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 *Index of Rules*. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION

Part 4. Office of the Secretary of State

Chapter 91. Texas Register

40 TAC §3.704.....950 (P)

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