TEXAS REGISTER

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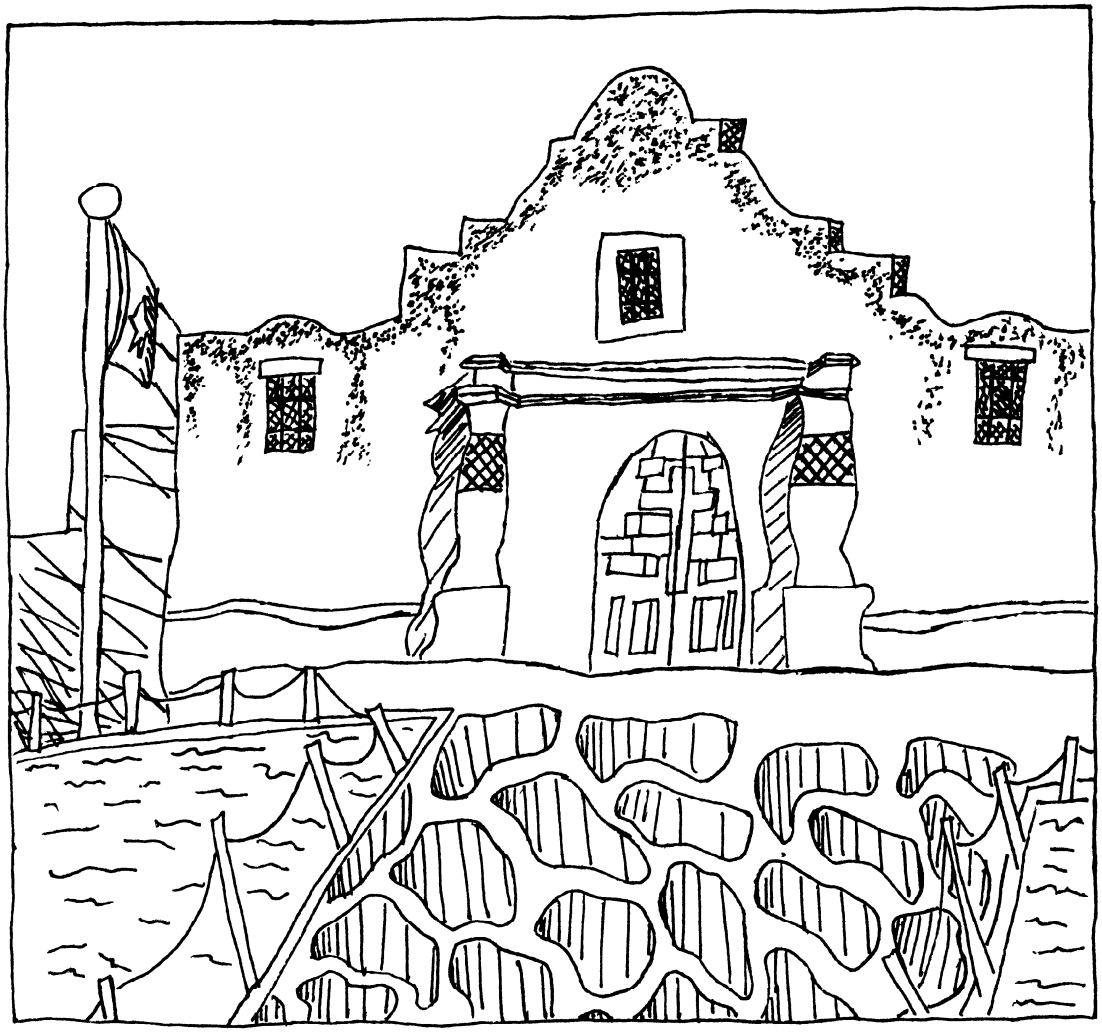

Jaime Vela

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

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

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IN THIS ISSUE

THE ATTORNEY GENERAL

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

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

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

Request for Opinions

RQ-0776-GA

Requestor:

The Honorable Warren Chisum

Chair, Committee on Appropriations

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Whether the phrase "cut of a county road" as used in section 240.907 of the Local Government Code applies to an activity that bores under the road (RQ-0776-GA)

Briefs requested by February 23, 2009

RQ-0777-GA

Requestor:

The Honorable David P. Weeks

Walker County Criminal District Attorney

1036 11th Street

Huntsville, Texas 77340

Re: Whether certain reservations and assignments in deeds transferred by a member of a city council exclude particular property from tax increment financing under section 312.204(d) of the Tax Code (RQ-0777-GA)

Briefs requested by February 23, 2009

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

TRD-200900315
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: January 27, 2009

♦ ♦ ♦

Opinions

Opinion No. GA-0692

Mr. Adan Munoz, Jr.

Executive Director

Texas Commission on Jail Standards

Post Office Box 12985

Austin, Texas 78711

Re: Observation of county jail inmates while they are confined in courthouse holding cells (RQ-0722-GA)

S U M M A R Y

As the agency charged with adopting reasonable rules and procedures establishing minimum standards for the custody, care and treatment of prisoners, the Texas Commission on Jail Standards must determine, in the first instance, whether bailiffs have the authority to supervise inmates being held in courthouse holding cells.

Opinion No. GA-0693

The Honorable Robert F. Vititow

Rains County Attorney

220 West Quitman

Post Office Box 1075

Emory, Texas 75440

Re: Authority of a commissioners court to remove from county right-of-way structures it deems to be a safety hazard (RQ-0729-GA)

S U M M A R Y

Pursuant to its general control over all roads, highways, and bridges in the county, as provided for in section 251.016 of the Transportation Code, a commissioners court may remove or order the removal of objects in the county road right-of-way that create a safety hazard to the public. Whether the mailboxes at issue are hazardous to the public, and can therefore be removed by the commissioners court, is a fact question not appropriate for the opinion process.

Generally, when a road is established by prescription or dedication, the right is not limited to the area traveled, but includes sufficient land, where reasonably available, for drainage ditches, repairs, and the convenience of the traveling public. However, whether and to what extent a public right-of-way has been acquired by dedication or prescription is a question of fact that cannot be decided through the opinion process.

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

TRD-200900314

Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: January 27, 2009

♦ ♦ ♦

EMERGENCY RULES

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

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 80. MANUFACTURED HOUSING

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") on an emergency basis adopts amendments to 10 TAC Chapter 80, §§80.2, 80.21, and 80.22, relating to installation standards of the manufactured housing program.

Section 80.2 - Added a new paragraph (16) for the definition of Frost Line Zone and renumbered the remaining paragraphs (17) to (26).

Section 80.21 - Revised to differentiate installation for new and used manufactured homes and added new subsection (i) relating to the Frost Line Zone.

Section 80.22 - Revised subsection (a) to clarify the rule only relates to used manufactured homes.

The amendments are adopted on an emergency basis to comply with the Federal Installation Standards that became effective on January 1, 2009.

SUBCHAPTER A. CODES, STANDARDS, TERMS, FEES AND ADMINISTRATION

10 TAC §80.2

The amendments are adopted on an emergency basis under the Texas Manufactured Housing Standards Act, Texas Occupations Code, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department; under Texas Government Code, Chapter 2306, §2306.6014 and §2306.6020, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division; and the Texas Government Code, §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

No other statutes, codes, or articles are affected by the adopted emergency amendments.

§80.2. Definitions.

Terms used herein that are defined in the Code and the Standards Act have the meanings ascribed to them therein. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) APA--Administrative Procedure Act, Texas Government Code, Chapter 2001.

(2) Business days--Includes every day on the calendar except Saturday, Sunday, and federal and state holidays.

(3) Chattel Mortgage--Any loan that is not subject to the Real Estate Settlement Procedures Act (RESPA).

(4) Coastline--The shoreline that forms the boundary between the land and the Gulf of Mexico or a bay or estuary connecting to the Gulf of Mexico that is more than five miles wide.

(5) Cosmetic--Matters of flaws and finish, appearance, materials or workmanship not covered by 24 CFR Part 3280.

(6) Credit document--Any executed written agreements between the consumer and creditor that describe or are required in connection with an actual credit transaction.

(7) Creditor--A person involved in a credit transaction who:

(A) extends or arranges the extension of credit; or

(B) is a retailer or broker as defined in the Standards Act and participates in arranging for the extension of credit.

(8) Custom designed stabilization system--An anchoring and support system that is not an approved method as prescribed by the state generic standards, manufacturer's installation instructions, or other systems pre-approved by the Department.

(9) Dangerous conditions--Any condition which, if present, would constitute an imminent threat to health or safety.

(10) DAPIA--The Design Approval Primary Inspection Agency.

(11) Department or TDHCA--The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (TDHCA).

(12) Deposits--Money or other consideration given by a consumer to a retailer, salesperson, or agent of a retailer to hold a manufactured home in inventory for subsequent purchase or to confirm the agreed price on a home to be specially ordered.

(13) Down Payment--An amount, including the value of any property used as a trade-in, paid to a retailer to be applied to the purchase price of a manufactured home, including any goods or services that are a part of that transaction.

(14) Dwelling unit--One or more habitable rooms which are designed to be occupied for living.

(15) FMHCSS--Federal Manufactured Home Construction and Safety Standards that implement the National Manufactured Home Construction and Safety Standards Act of 1974, 42 USC 5401, et seq., as amended from time to time.

(16) Frost Line Zone--An area in Texas designated by the Department, as having a frost line depth to consider when conforming with federal rules.

(17) [~~(16)~~] Independent testing laboratory--An agency or firm that tests products for conformance to standards and employs at least one engineer or architect licensed in at least one state.

(18) [~~(17)~~] Inventory Lender--A person that is involved in extending credit for inventory financing secured by manufactured housing.

(19) [~~(18)~~] IPIA--The Production Inspection Primary Inspection Agency which evaluates the ability of manufactured home manufacturing plants to follow approved quality control procedures and/or provides ongoing surveillance of the manufacturing process.

(20) [~~(19)~~] Long-Term Lease--For the purpose of determining whether or not the owner of a manufactured home may elect to treat the home as real property, is a lease on land to which the manufactured home has been attached and which:

(A) has been approved by each lienholder for the manufactured home by placing on file with the Department written consent to have the home treated as real property; or

(B) is for at least five years if the home is not financed.

(21) [~~(20)~~] Main frame--A chassis or structure serving a similar purpose.

(22) [~~(21)~~] Manufactured home identification numbers--HUD label number, serial number, or Texas seal number. For the purpose of maintaining ownership and location records, including the perfection of liens, the numbers shall include the HUD label number(s) and the serial number(s) imprinted or stamped on the home in accordance with HUD departmental regulations. For homes manufactured prior to June 15, 1976, the Texas seal number, as issued by the Department, shall be used instead of the HUD label number. If a home manufactured prior to June 15, 1976, does not have a Texas seal, or if a home manufactured after June 15, 1976, does not have a HUD label, a Texas seal shall be purchased from the Department and attached to the home in upper left corner on the end opposite the tongue end and used for identification in lieu of the HUD label number.

(23) [~~(22)~~] Manufactured home site--That area of a lot or tract of land on which a manufactured home is or will be installed.

(24) [~~(23)~~] Permanent foundation--A foundation which meets the requirements of §80.21 of this chapter (relating to Requirements for the Installation of Manufactured Homes) and was constructed according to drawings, as required by that section, which state that the foundation is a permanent foundation for a manufactured home.

(25) [~~(24)~~] Promptly--Means within the time prescribed by the Standards Act, these Rules, and any administrative order (including any properly granted extension) or, in the case of a matter that constitutes an imminent threat to health or safety, as quickly as reasonably possible.

(26) [~~(25)~~] Stabilization systems--A combination of the anchoring and support system. It includes, but is not limited to the following components:

(A) Anchoring components--Any component which is attached to the manufactured home and is designed to resist the horizontal and vertical forces imposed on the manufactured home as a result of wind loading. These components include, but are not limited to auger anchors, rock anchors, slab anchors, ground anchors, stabilizing devices, connection bolts, j-hooks, buckles, and split bolts.

(B) Anchoring equipment--Straps, cables, turnbuckles, tubes, and chains, including tensioning devices, which are used with ties to secure a manufactured home to anchoring components or other devices.

(C) Anchoring systems--Combination of ties, anchoring components, and anchoring equipment that will resist overturning and lateral movement of the manufactured home from wind forces.

(D) Diagonal tie--A tie intended to primarily resist horizontal forces, but which may also be used to resist vertical forces.

(E) Footing--That portion of the support system that transmits loads directly to the soil.

(F) Ground anchor--Any device at the manufactured home site designed to transfer manufactured home anchoring loads to the ground.

(G) Longitudinal ties--Designed to prevent lateral movement along the length of the home.

(H) Shim--A wedge-shaped piece of hardwood or other registered component not to exceed one (1) inch vertical (actual) height.

(I) Stabilizing components--All components of the anchoring and support system such as piers, footings, ties, anchoring equipment, ground anchors and any other equipment, which supports the manufactured home and secures it to the ground.

(J) Support system--A combination of footings, piers, caps and shims that support the manufactured home.

(K) Vertical tie--A tie intended primarily to resist the uplifting and overturning forces.

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

Filed with the Office of the Secretary of State on January 26, 2009.

TRD-200900296
Joe A. Garcia
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Effective Date: January 26, 2009
Expiration Date: May 25, 2009
For further information, please call: (512) 475-2206

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SUBCHAPTER B. INSTALLATION STANDARDS AND DEVICE APPROVALS

10 TAC §80.21, §80.22

The amendments are adopted on an emergency basis under the Texas Manufactured Housing Standards Act, Texas Occupations Code, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department; under Texas Government Code, Chapter 2306, §2306.6014 and §2306.6020, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division; and the Texas Government Code, §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

No other statutes, codes, or articles are affected by the adopted emergency amendments.

§80.21. Requirements for the Installation of Manufactured Homes.

(a) All new manufactured homes shall be installed by a licensed installer and in accordance with the home manufacturer's DAPIA-approved installation instructions.

(b) [~~(a)~~] All used [~~When they are installed, all~~] manufactured homes shall be installed by a licensed installer to resist overturning and lateral movement of the home, and the installation must be completed in accordance with instructions appropriate for the Wind Zone where the home is to be installed as per one of the following:

(1) the home manufacturer's DAPIA-approved installation instructions;

(2) the state's generic standards set forth in §§80.22, 80.23, 80.24, and 80.25 of this chapter;

(3) the instructions for a stabilization system registered with the Department in accordance with §80.26 of this chapter (relating to Registration of Stabilizing Components and Systems); or

(4) the instructions for a special stabilization system which:

(A) may or may not be a permanent foundation;

(B) is for a particular manufactured home or an identified class of manufactured homes to be installed at a particular area with similar soil properties according to county soil survey or other geotechnical reports; and

(C) is either:

(i) a pre-existing foundation for which a professional engineer or architect licensed in Texas has issued written approval for the installation of a particular home, and the written approval shall be submitted to the Department with the installation report; or

(ii) installed in accordance with a custom designed stabilization system drawing that is stamped by a Texas licensed professional engineer or architect. A copy of the stabilization system drawing must be forwarded to the Department along with the installation report.

(c) [~~(b)~~] When a home is installed on a stabilization system registered with the Department or a special stabilization system, the installer must follow the home manufacturer's DAPIA-approved installation instructions for any aspect of the installation that is not covered by the system's installation instructions or drawings.

(d) [~~(c)~~] The installer must use stabilizing components that have the required capacity and install them according to the anchor or stabilizing component manufacturer's current installation instructions. All stabilizing components must be resistant to all effects of weathering including that encountered along the Texas gulf coast. Anchors must be made resistant to corrosion. Nonconcrete stabilizing components and systems for use within 1500 feet of the coastline shall be specifically certified for this use. Preservative treated (PT) wood components shall conform to the applicable standards issued by the American Wood Preserver's Association and referenced by the latest edition of the International Residential Code. The use of re-conditioned equipment (i.e. anchor, strap, and clip) or any anchoring component by licensed installer on the new installations is not permitted. Homeowners are exempt from this requirement provided the integrity of the component is acceptable and approved by the state and the original product number, vendor name, and/or patent number must be legible on the product.

(e) [~~(d)~~] Site Preparation Responsibilities and Requirements:

(1) The responsible installer of a new manufactured home is responsible for the proper preparation of the site where the manufactured home will be installed.

(2) [~~(1)~~] A consumer acquiring a used manufactured home to be installed[~~, new or used,~~] is responsible for the proper preparation of the site where the manufactured home will be installed except as set forth in §80.22 of this chapter (relating to Generic Standards for Moisture and Ground Vapor Controls).

(3) [~~(2)~~] Whenever a licensed retailer intends to sell a used manufactured home, regardless of where it is located or is to be located, the retailer is required to give the consumer the Site Preparation Notice, for signature by the consumer, in the form set forth in Subchapter I of this chapter (relating to Forms) PRIOR to the execution of any binding sales agreement.

(4) [~~(3)~~] Whenever a licensed installer proposes to move a used manufactured home, the installer is required to give the consumer the Site Preparation Notice, for signature by the consumer, in the form set forth in Subchapter I of this chapter PRIOR to entering into a binding agreement to move that home.

(f) [~~(e)~~] If at the time of installation or within 90 days thereafter as stated on the contract, the retailer or installer provides the materials for skirting or contracts for the installation of skirting, the retailer or installer is responsible for installing any required moisture and ground vapor control measures in accordance with the home installation instructions, specifications of a registered stabilization system, or the generic standards and shall provide for the proper cross ventilation of the crawl space. If the consumer contracts with a person other than the retailer or installer for the skirting, the consumer is responsible for installing the moisture and ground vapor control measures and for providing for the proper cross ventilation of the crawl space.

(g) [~~(f)~~] Clearance: If the manufactured home is installed according to the state's generic standards, a minimum clearance of 18 inches between the ground and the bottom of the floor joists must be maintained. In addition, the installer shall be responsible for installing the home with sufficient clearance between the I-Beams and the ground so that after the crossover duct prescribed by the manufacturer is properly installed it will not be in contact with the ground. Refer to §80.25 of this chapter (relating to Generic Standards for Multi-Section Connections Standards) for additional requirements for utility connections. The Installer must remove all debris, sod, tree stumps and other organic materials from all areas where footings are to be located.

(h) [~~(g)~~] Drainage: The consumer is responsible for proper site drainage where the manufactured home (new or used) is to be installed unless the home is installed in a rental community. Drainage prevents water build-up under the home. Water build-up may cause shifting or settling of the foundation, dampness in the home, damage to siding and bottom board, buckling of walls and floors, delamination of floor decking and problems with the operation of windows and doors.

(i) Frost Line Zone.

(1) The following Texas counties have a 12 inch frost line depth to consider for the installation of a new manufactured home: Armstrong, Bailey, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Floyd, Foard, Gray, Hale, Hall, Hansford, Hardeman, Hartley, Hemphill, Hockley, Hutchinson, King, Knox, Lamb, Lipscomb, Lubbock, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Wheeler, and Wilbarger.

(2) For a new home to be installed in a Frost Line Zone county, footings placed in freezing climates must be designed using

methods and practices that prevent the effects of frost heave by one of the following methods:

(A) Conventional footings. Conventional footings must be placed below the frost line depth for the site unless an insulated foundation or monolithic slab is used (refer to 24 CFR 3285.312(b)(2) and 24 CFR 3285.312(b)(3)).

(B) This is not subject to the provisions in 24 CFR 3285.2(c) that also require review by the manufacturer and approval by its DAPIA for any variations to the manufacturer's installation instructions for support and anchoring.

(C) Monolithic slab systems. A monolithic slab is permitted above the frost line when all relevant site-specific conditions, including soil characteristics, site preparation, ventilation, and insulative properties of the under floor enclosure, are considered and anchorage requirements are accommodated as set out in 24 CFR 3285.401. The monolithic slab system must be designed by a registered professional engineer or registered architect:

(i) In accordance with acceptable engineering practice to prevent the effects of frost heave; or

(ii) In accordance with SEI/ASCE 32-01 as defined in 24 CFR 3285.4.

(D) Insulated foundations. An insulated foundation is permitted above the frost line, when all relevant site-specific conditions, including soil characteristics, site preparation, ventilation, and insulative properties of the under floor enclosure, are considered, and the foundation is designed by a registered professional engineer or registered architect:

(i) In accordance with acceptable engineering practice to prevent the effects of frost heave; or

(ii) In accordance with SEI/ASCE 32-01 as defined in 24 CFR 3285.4.

§80.22. Generic Standards for Moisture and Ground Vapor Controls.

(a) If the used manufactured home is installed according to the state's generic standards and the space under the home is to be enclosed with skirting and/or other materials provided by the retailer and/or installer, the enclosure must meet the following requirements:

(1) At least one access opening that does not require the use of tools to gain access shall not be less than 18 inches in any dimension and not less than three square feet in area shall be provided by the installer. The access opening shall be located so as to enable, to the extent reasonably possible, the visual inspection of water supply and sewer drain connections.

(2) If a clothes dryer exhaust duct, air conditioning condensation drain, or combustion air inlet is present, the installer must pass it through the skirting to the outside. All air conditioning condensation lines must be installed in such manner that prevents ponding within 5 feet of the foundation.

(3) Crawl space ventilation must be provided at the rate of minimum 1 square foot of net free area, for every 150 square feet of floor area.

(4) At least six openings shall be provided, one at each end of the home and two on each side of the home. There must be a ventilation within 3 feet of each corner. The openings shall be screened or otherwise covered to prevent entrance of rodents (note: screening will reduce net free area). For example, a 16'x76' single section home has 1216 square feet of floor area. This 1216 square feet divided by 150 equals 8.1 square feet or 1166 square inches of net free area crawl space ventilation.

(b) The generic ground vapor control measure shall consist of a ground vapor retarder that is minimum 6 mil polyethylene sheeting or its equivalent, installed so that the area under the home is covered with sheeting and overlapped approximately 12 inches at all joints. Any tear larger than 18 inches long or wide must be taped using a material appropriate for the sheeting used. The laps should be weighted down to prevent movement. Any small tears and/or voids around construction (footings, anchor heads, etc.) are acceptable.

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

Filed with the Office of the Secretary of State on January 26, 2009.

TRD-200900295
Joe A. Garcia
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Effective Date: January 26, 2009
Expiration Date: May 25, 2009
For further information, please call: (512) 475-2206

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING
SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.19

The General Land Office is renewing the effectiveness of the emergency adoption of new §15.19, for a 60-day period. The text of the new section was originally published in the October 24, 2008 issue of the *Texas Register* (33 TexReg 8698).

Filed with the Office of the Secretary of State on January 21, 2009.

TRD-200900271
Trace Finley
Deputy Commissioner, Policy and Governmental Affairs
General Land Office
Original Effective Date: October 7, 2008
Expiration Date: April 4, 2009
For further information, please call: (512) 475-1859

♦ ♦ ♦

31 TAC §15.20

The General Land Office is renewing the effectiveness of the emergency adoption of new §15.20, for a 60-day period. The text of the new section was originally published in the October 24, 2008 issue of the *Texas Register* (33 TexReg 8699).

Filed with the Office of the Secretary of State on January 21, 2009.

TRD-200900270
Trace Finley
Deputy Commissioner, Policy and Governmental Affairs
General Land Office
Original Effective Date: October 8, 2008
Expiration Date: April 5, 2009
For further information, please call: (512) 475-1859

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PART 4. SCHOOL LAND BOARD

CHAPTER 155. LAND RESOURCES

SUBCHAPTER A. COASTAL PUBLIC LANDS

31 TAC §155.17

The School Land Board is renewing the effectiveness of the emergency adoption of new §155.17, for a 60-day period. The text of the new section was originally published in the October 31, 2008 issue of the *Texas Register* (33 TexReg 8853).

Filed with the Office of the Secretary of State on January 22, 2009.

TRD-200900273
Trace Finley
Deputy Commissioner, Policy and Governmental Affairs, General Land Office
School Land Board
Original Effective Date: October 15, 2008
Expiration Date: April 12, 2009
For further information, please call: (512) 475-1859

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

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

TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 34. SCHEDULE OF SANCTIONS AND PENALTIES

16 TAC §34.1

The Texas Alcoholic Beverage Commission (commission) proposes to amend §34.1, relating to the general provisions of the commission's schedule of sanctions and penalties rule.

Specifically the proposed amendment to §34.1(j) deletes "section" from the sentence and replaces it with "chapter". The provisions of Chapter 34, by its terms apply only to settlements entered into by "agents, compliance officers or other specifically designated commission personnel." The use of the term "section" in subsection (j), has been erroneously interpreted to limit the exclusion of contested cases or complaints or violations referred to the legal division to §34.1 of the chapter. The proposed change clarifies that the exclusion of cases referred to the legal division applies to the entire chapter, not just the general provisions section.

Charlie Kerr, Chief Financial Officer, has determined that for each fiscal year of the first five years the amended section is in effect, there will be no fiscal implications to the state as a result of enforcing or administering the section as proposed.

Mr. Kerr has determined that for each fiscal year of the first five years the amended section is in effect, there will be no impact on local government as a result of the amendment.

Mr. Kerr has determined that for the first five years that the proposed amendment is in effect, there will be no fiscal impact on small or micro-businesses.

Sherry Cook, Assistant Administrator, has determined that for each of the first five years that the amendment is in effect, it is anticipated that the public will benefit as a result of the clarification added by the amendment.

Comments on the proposed amendment may be addressed to Joan Carol Bates, Deputy General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711, or by electronic mail to joan.bates@tabc.state.tx.us. Comments will be accepted for 30 days following publication of the proposed amendment in the *Texas Register.*

The proposed amendment to §34.1 is authorized by §5.362 of the Texas Alcoholic Beverage Code (code), which provides the commission with authority to adopt by rule the schedule of sanctions and penalties, and by §5.31 of the code, which provides the commission with authority to prescribe and publish rules necessary to carry out the provisions of the code.

Cross Reference: Section 5.31 and §5.362, of the Alcoholic Beverage Code and Chapter 34 of the commission rules are affected by the proposed amendment.

§34.1. General Provisions.

(a) This rule relates to §§11.61, 11.64, 11.641 and 106.13 of the Alcoholic Beverage Code.

(b) Agents, compliance officers or other specifically designated commission personnel have authority to settle a complaint issued by the commission against a person for a violation of the Texas Alcoholic Beverage Code (Code), prior to filing a contested case under Government Code, Chapter 2001, Subchapter C (Administrative Procedure Act).

(c) A settlement authorized by this chapter must reflect the number of days a permit will be suspended or the amount of civil penalty authorized per day in lieu of suspension and shall conform to the other provisions of this chapter.

(d) A written warning may be issued for any violation if it is determined by designated commission personnel to be an effective deterrent from further violations of the Code.

(1) A written warning may be used as an aggravating circumstance for purposes of determining the appropriate sanction under §34.2.

(2) A written warning is subject to the rights and procedures of a contested case under the Administrative Procedure Act.

(3) A written warning is an administrative notice issued by a representative of the commission to the permit or license holder documenting that a violation of the TABC code or rules has occurred.

(e) Any case alleging a sale to a minor or intoxicated person in violation of Alcoholic Beverage Code §§11.61(b)(14), 61.71(a)(6) or 101.63 in which the unlawful sale or service directly or indirectly caused death or serious bodily injury shall be referred directly to the Legal Services Division by district or regional personnel without an offer of settlement or compromise provided to the permittee/licensee. For purposes of this section, "serious bodily injury" means as defined in §1.07(a)(46) of the Texas Penal Code.

(f) Each suspension of a permit or license shall run for consecutive days. A person assessed a suspension by the commission may be provided with an opportunity to pay a civil penalty in lieu of a suspension as provided by §11.64 of the Code. The commission may, in its discretion, allow a licensee/permittee to divide an imposed sanction between civil penalty and suspension.

(g) A subsequent violation of the Code or rule will result in a sanction in the next higher violation level if the subsequent violation:

(1) is for a health, safety and welfare violation and occurs within 36 months of the prior violation, or

(2) is for a violation listed in the major regulatory violation category within 24 months of the prior violation, and

(3) the person has been given written notice of the prior violation, or

(4) the subsequent violation is issued during an undercover operation

(h) The list of violations in §34.2 is not intended to be an exhaustive list of possible violations of the Code or rules of the commission. A sanction for a violation of the Code or rules that is not listed in §34.2 must be approved by either the assistant administrator for field operations or a division director prior to entering into a settlement.

(i) A person authorized to enter into a settlement under this section is also authorized to recommend a deviation from sanctions in §34.2 when aggravating or mitigating circumstances are found to exist.

(1) A recommendation to deviate from sanctions in §34.2 must be made in writing.

(2) The administrator or his designee must approve a recommendation to deviate from §34.2 before the settlement may be offered.

(j) This chapter [~~section~~] does not apply to a contested case brought under Chapters C and D of the Administrative Procedure Act, or a complaint or violation referred to the legal division of the commission for resolution.

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

Filed with the Office of the Secretary of State on January 23, 2009.

TRD-200900294
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: March 8, 2009
For further information, please call: (512) 206-3204

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PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 403. GENERAL ADMINISTRATION

16 TAC §403.501

The Texas Lottery Commission (Commission) proposes new 16 TAC §403.501 (Custody and Use of Criminal History Record Information). The purpose of the proposed new rule is to meet the statutory requirement of Texas Government Code, Chapter 466, Subchapter E, §466.205(b) providing policies for the custody and use of criminal history information. The new rule establishes that all criminal history information will be kept in a secure environment and provided to Commission staff, as needed, to meet the statutory requirements of the Texas Lottery Act and the Bingo Enabling Act; and, will not be released or disclosed except on court order.

Kathy Pyka, Controller, has determined that for each year of the first five years the new rule will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed new rule. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the new rule as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the new rule will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Pete Wassdorf, Assistant General Counsel, has determined that for each year of the first five years the proposed new rule will be in effect, the public benefit anticipated will be that the Texas Lottery Commission meets the requirements of Texas Government Code, Chapter 466, Subchapter E, §466.205(b). This rule is based on the current practices of the Commission and thus conforms the agency rules to the statutory requirements and agency practices.

The Commission requests comments on the new rule from any interested person. Comments on the proposed rule may be submitted to Pete Wassdorf, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at www.legal.input@lottery.state.tx.us. Comments must be received within 30 days after publication of this proposal in order to be considered.

The new rule is proposed under the specific requirement of Texas Government Code, Chapter 466, Subchapter E, §466.205(b), and the authority of Texas Government Code §466.015, which provides the Commission with the authority to adopt rules governing the operation of the lottery. The new rule is also proposed under the authority of Texas Government Code §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code, §466.205(b).

§403.501. Custody and Use of Criminal History Record Information.

(a) The use of "criminal history record information," as defined by Texas Government Code, §411.082, obtained or maintained by the Texas Lottery Commission pursuant to Texas Government Code, Chapter 411, Subchapter F, §411.083 and §411.108, and Texas Government Code, Chapter 466, Subchapter E, §466.201, and as otherwise necessarily implied to meet the statutory requirements of the Texas State Lottery Act and the Bingo Enabling Act (collectively referred to as the Acts), shall be limited to the use of the Texas Lottery Commission and staff in determining whether the various persons enumerated in the Acts meet the statutory requirements of the Acts. All criminal history record information received by the Texas Lottery Commission is confidential information or will be treated as confidential information and is for the exclusive use of the Texas Lottery Commission and its staff. Criminal history record information obtained by the Commission under the above referenced statutes will not be released or disclosed to any person except on court order, provided that the Texas Lottery Commission may disclose to the person who is the subject of the criminal history record information the dates and places of arrests, offenses, and dispositions contained in the criminal history record information.

(b) All criminal history information will be kept in the enforcement division under secure control. The criminal history information will be provided to the persons listed in subsection (c) of this section

on an as needed basis. Copies of criminal history records will not be made by staff unless approved by the division director. Any copy made should be destroyed when its use has been fulfilled.

(c) Access to criminal history record information maintained by the Texas Lottery Commission will be limited to the following persons:

(1) Commissioners of the Texas Lottery Commission;

(2) the Executive Director or Deputy Executive Director of the Commission;

(3) any attorney employed by the Texas Lottery Commission or an assistant attorney general representing the interest of the Texas Lottery Commission;

(4) employees of the Enforcement Division;

(5) division directors and employees of divisions authorized to make approvals or disapprovals based on criminal history information; and

(6) any person appointed to act on behalf of or in the stead of any of the individuals listed in paragraphs (1) - (5) of this subsection.

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

Filed with the Office of the Secretary of State on January 21, 2009.

TRD-200900251
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: March 8, 2009
For further information, please call: (512) 344-5012

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TITLE 22. EXAMINING BOARDS

PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING RULES

SUBCHAPTER A. LICENSING

22 TAC §851.30

The Texas Board of Professional Geoscientists (TBPG or Board) proposes an amendment to 22 TAC §851.30, regarding firm registration. The proposed amendment clarifies procedures for renewing an expired firm registration.

Mr. Charles Horton, Interim Executive Director of TBPG, has determined that for the first five-year period the section is in effect there will be little or no fiscal impact for state or local government as a result of enforcing or administering the section.

Mr. Horton has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be enhancement of the professional practice of geoscientists by clarifying procedures for renewing expired firm registrations. There will be little or no effect on small businesses. There is little or no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on this proposal may be submitted in writing to: Molly B. Roman, Administrative Coordinator, P.O. Box 13225, Austin, Texas 78711, (512) 936-4405. Comments may also be submitted electronically to mroman@tbpg.state.tx.us or faxed to (512) 936-4409. Comments must be submitted no later than 30 days from the date the proposed amendments are posted in the *Texas Register*. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by Ms. Roman no more than 15 calendar days after notice of proposed amendments to this section have been published in the *Texas Register*.

This amendment is proposed under the Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce rules consistent with the Texas Geoscience Practice Act and necessary for the performance of its duties, and §1002.351, which authorizes the Board to regulate the public practice of geoscience by firms and corporations.

The proposed amendment implements the Texas Occupations Code, §1002.151 and §1002.351.

§851.30. Firm Registration.

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

(g) A certificate of registration which has been expired [~~for less than one year~~] may be renewed by completing the renewal statement sent by the Board and payment of a $50 late renewal fee. When renewing an expired certificate of registration, the authorized official of the firm shall submit a written statement of whether geoscientific services were offered, pending, or performed for the public in Texas during the time the certificate of registration was expired.

[~~(h) If a certificate of registration has been expired for more than one year, the firm must re-apply for certification under the laws and rules in effect at the time of the new application and shall be issued a new certificate of registration serial number if the new application is approved.~~]

(h) [~~(i)~~] The renewal fee will not be refunded.

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

Filed with the Office of the Secretary of State on January 20, 2009.

TRD-200900226
Charles Horton
Interim Executive Director
Texas Board of Professional Geoscientists
Earliest possible date of adoption: March 8, 2009
For further information, please call: (512) 936-4405

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 412. LOCAL MENTAL HEALTH AUTHORITY RESPONSIBILITIES
SUBCHAPTER G. MENTAL HEALTH COMMUNITY SERVICES STANDARDS

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes the repeal of §§412.301 - 412.322, and new §§412.301, 412.303, 412.304, 412.311 - 412.318, and 412.321 - 412.327, concerning mental health community services standards.

BACKGROUND AND PURPOSE

The purpose of this subchapter is to describe requirements for ensuring the adequate provision and appropriate delivery of mental health community services. Repeal of the existing rules is necessary due to substantial changes being made to the rules to align them with existing service delivery requirements. Beginning with fiscal year 2005, the department began incorporating principles of Resiliency and Disease Management (RDM) into its overall approach to regulating the delivery of community mental health services. The core services affected by RDM include mental health rehabilitative and mental health case management services. However, key components of RDM are reflected throughout the proposed new rules.

Although the rules proposed for repeal applied to all Medicaid managed care organizations, the new proposed rules will only apply to local mental health authorities, managed care organizations, and other providers that contract directly with the department. Under the Texas Health and Safety Code, §533.047, Managed Care Organizations: Medicaid Program, the former Texas Department of Mental Health and Mental Retardation was charged with developing performance and quality of care standards for the provision of mental health and mental retardation services to Medicaid clients by managed care organizations involved in the Medicaid Program. As a result of the passage of House Bill 2292 (78th Texas Legislature, Regular Session, 2003), effective September 1, 2004, the responsibility to implement the Texas Health and Safety Code, §533.047, was transferred to Health and Human Services Commission. Therefore, the department is only responsible for developing standards for community mental health services by those providers with which the department contracts directly.

Additionally, Texas Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 412.301 - 412.322 have been reviewed and the department has determined that reasons for adopting some of the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

Throughout the entire subchapter, replacement of the terms, "consumer" with "individual," and "MMCO or Medicaid managed care organization" with "MCO or managed care organization," is proposed, to reflect current usage of terminology within the mental health care delivery system. Other changes made include various grammatical, punctuation, and formatting changes. In addition to these overall changes, more specific proposed changes are described as follows.

Division 1. General Provisions.

Proposed §412.301 states the purpose of the subchapter and its application to providers with which the department contracts.

Proposed §412.303 sets forth a number of definitions of terms used throughout the subchapter, including the following not previously included in the rules being proposed for repeal: "Advanced practice nurse," "Advocacy," "Appeal," "Assessment," "COPSD or co-occurring psychiatric and substance use disorders," "CSSP or community services specialist," "Department," "Department-approved algorithm," "Face-to-face," "Family partner," "HIPPA," "Indicator," "Individual," "LCDC or licensed chemical dependency counselor," "LCSW or licensed clinical social worker," "LMFT or licensed marriage and family therapist," "LOC or level of care," "LPC or licensed professional counselor," "LPHA or licensed practitioner of the healing arts," "LVN or licensed vocational nurse," "MCO or managed care organization," "Peer provider," "Physician," "Physician assistant," "Psychologist," "Recovery," "RN or registered nurse," "Restraint," "Seclusion," "Staff member," "Support services," "Telemedicine," "Uniform assessment," "Utilization management exception," "Utilization management guidelines" and "Volunteer."

Proposed §412.304 specifically identifies which of the divisions in the subchapter apply to which types of providers, and sets forth the responsibilities of local mental health authorities (LMHAs), and managed care organizations (MCOs) to obligate and monitor other providers for compliance with the subchapter.

Division 2. Organizational Standards.

Proposed §412.311 sets forth primary leadership responsibilities of the LMHA and MCO, including, requiring encouragement and support of advocacy for individuals, policies and procedures to avoid conflict of interest, and collaboration with other health care agencies and community resources.

Proposed §412.312 sets forth requirements to ensure a proper environment of care and safety at service delivery sites, including clarification on the use of restraint and seclusion.

Proposed §412.313 sets forth the rights and protections that must be afforded by providers to all individuals who are seeking or receiving mental health services, and requires a non-coercive policy and specific factors that cannot affect eligibility for services.

Proposed §412.314 sets forth requirements relating to the provision of adequate access to mental health community services, including requirements for telephone access, crisis services and hotline telephone calls, emergency care services, urgent care services, routine care services, and referrals for physical health services.

Proposed §412.315 sets forth the requirements relating to maintenance of medical records and requires a written disaster recovery plan to ensure service continuity.

Proposed §412.316 sets forth requirements for certain competencies of staff members, which expands credentialing and documentation requirements for staff members beyond that required in the rules proposed for repeal.

Proposed §412.317 requires that community mental health services be provided under a detailed quality management plan and expands the requirements beyond what was previously required under the rules proposed for repeal.

Proposed §412.318 requires providers to develop and implement a utilization management program, timely prior authoriza-

tion system, and appeal and fair hearing procedures, including special requirements for Medicaid-eligible individuals.

Division 3. Standards of Care.

Proposed §412.321 identifies specific requirements relating to the provision of crisis services, including documentation and communication of crisis contacts.

Proposed §412.322 identifies various aspects of providers' responsibilities relating to service authorization; assessment, diagnosis and provision of services and related documentation; implementation and use of the department's utilization management guidelines and uniform assessment tools; and integrated treatment planning.

Proposed §412.323 sets forth requirements concerning medication services, including delegation of services, handling of medications, supervision of self-administration of medication, and medication errors.

Proposed §412.324 sets forth additional standards of care relating to the administration of the uniform assessment and the provision of mental health community services to children and adolescents, including an expansion of previous requirements for transition planning for adolescents who will continue to need mental health community services as adults.

Proposed §412.325 sets forth requirements for the provision of telemedicine and/or telepsychiatry, including implementation of procedures and clinical oversight.

Proposed §412.326 sets forth specific documentation requirements relating to service provision, including a requirement that such documentation be made within two business days after each service encounter occurs. The two-day requirement would not apply to crisis services, which is addressed in §412.321; day programs for acute needs, addressed in Chapter 419, Subchapter L; and case management services, which is addressed in Chapter 412, Subchapter I.

Proposed §412.327 sets forth requirements for supervision of various staff members, and for implementation of a peer review process for licensed staff members.

FISCAL NOTE

Mike Maples, Assistant Commissioner for Mental Health and Substance Abuse Services, has determined that for each year of the first five-year period 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. Maples has also determined that the proposed rules will have no direct adverse economic impact on small businesses. The rules have direct application only to those entities with which the department contracts to provide community mental health services, none of which meet the definition of small business under the Texas Government Code, §2006.001. The economic cost to those entities required to comply with the rules is anticipated to be minimal or none at all, because the rules are primarily being updated to incorporate principles of RDM that are already required by contract; and any costs associated with changes related to implementation of crisis services redesign are likely to be offset by additional funding to be appropriated and provided under contract. To the extent that the rules may have any indirect effect on small businesses with which the department's contractors may contract to provide services, maintaining the standards applicable to the department's contractors under these rules is essential to protecting the health and welfare of the state. Therefore, an economic impact statement and regulatory flexibility analysis for small businesses are not required. There is no anticipated impact on local employment.

PUBLIC BENEFIT

In addition, Mr. Maples 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 a result of enforcing or administering the rules is to ensure adequate and appropriate provision of mental health community services throughout the state.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed repeals and 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 proposal may be submitted to Janet Fletcher, Program Services Section, Program Design Unit, Department of State Health Services, Mail Code 2018, 909 West 49th Street, Austin, Texas 78751, (512) 419-2673 or by email to janet.fletcher@dshs.state.ts.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

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

DIVISION 1. GENERAL PROVISIONS

25 TAC §§412.301 - 412.306

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

STATUTORY AUTHORITY

The proposed repeals are authorized by Texas Health and Safety Code, §534.053, which requires the department to ensure that certain community-based services are available in each service area; Texas Health and Safety Code, §534.058, which requires the department to develop standards of care for the services provided by local mental health authorities and their subcontractors; and Texas Government Code, §531.0055, and Texas 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 Texas Health and Safety Code, Chapter 1001.

The proposed repeals affect Texas Government Code, §531.0055; and Texas Health and Safety Code, §§533.047, 534.053, 534.058, and 1001.075.

§412.301. Purpose.

§412.302. Application.

§412.303. Definitions.

§412.304. Responsibility for Compliance.

§412.305. TDMHMR Responsibilities.

§412.306. Outcomes for Mental Health Community Services.

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

Filed with the Office of the Secretary of State on January 22, 2009.

TRD-200900277
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: March 8, 2009
For further information, please call: (512) 458-7111 x6972

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DIVISION 2. ORGANIZATIONAL STANDARDS

25 TAC §§412.307 - 412.313

(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 Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Texas Health and Safety Code, §534.053, which requires the department to ensure that certain community-based services are available in each service area; Texas Health and Safety Code, §534.058, which requires the department to develop standards of care for the services provided by local mental health authorities and their subcontractors; and Texas Government Code, §531.0055, and Texas 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 Texas Health and Safety Code, Chapter 1001.

The proposed repeals affect Texas Government Code, §531.0055; and Texas Health and Safety Code, §§533.047, 534.053, 534.058, and 1001.075.

§412.307. Leadership.

§412.308. Environment of Care and Safety.

§412.309. Rights and Protection.

§412.310. Access to Mental Health Community Services.

§412.311. Medical Records System.

§412.312. Competency and Credentialing.

§412.313. Quality Management.

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

Filed with the Office of the Secretary of State on January 22, 2009.

TRD-200900279
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: March 8, 2009
For further information, please call: (512) 458-7111 x6972

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DIVISION 3. STANDARD OF CARE

25 TAC §§412.314 - 412.316

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

STATUTORY AUTHORITY

The proposed repeals are authorized by Texas Health and Safety Code, §534.053, which requires the department to ensure that certain community-based services are available in each service area; Texas Health and Safety Code, §534.058, which requires the department to develop standards of care for the services provided by local mental health authorities and their subcontractors; and Texas Government Code, §531.0055, and Texas 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 Texas Health and Safety Code, Chapter 1001.

The proposed repeals affect Texas Government Code, §531.0055; and Texas Health and Safety Code, §§533.047, 534.053, 534.058, and 1001.075.

§412.314. Crisis Services.

§412.315. Assessment and Treatment Planning.

§412.316. Additional Standards of Care Specific to Mental Health Community Services for Children and Adolescents.

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

Filed with the Office of the Secretary of State on January 22, 2009.

TRD-200900281
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: March 8, 2009
For further information, please call: (512) 458-7111 x6972

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DIVISION 4. SERVICE STANDARDS

25 TAC §§412.317 - 412.320

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

STATUTORY AUTHORITY

The proposed repeals are authorized by Texas Health and Safety Code, §534.053, which requires the department to ensure that certain community-based services are available in each service area; Texas Health and Safety Code, §534.058, which requires the department to develop standards of care for the services provided by local mental health authorities and their subcontractors; and Texas Government Code, §531.0055, and Texas 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 Texas Health and Safety Code, Chapter 1001.

The proposed repeals affect Texas Government Code, §531.0055; and Texas Health and Safety Code, §§533.047, 534.053, 534.058, and 1001.075.

§412.317. Rehabilitative Services.
§412.318. Supported Employment.
§412.319. Supported Housing.
§412.320. Assertive Community Treatment (ACT).

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

Filed with the Office of the Secretary of State on January 22, 2009.

TRD-200900283
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: March 8, 2009
For further information, please call: (512) 458-7111 x6972

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DIVISION 5. REFERENCES AND DISTRIBUTION

25 TAC §412.321, §412.322

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

STATUTORY AUTHORITY

The proposed repeals are authorized by Texas Health and Safety Code, §534.053, which requires the department to ensure that certain community-based services are available in each service area; Texas Health and Safety Code, §534.058, which requires the department to develop standards of care for the services provided by local mental health authorities and their subcontractors; and Texas Government Code, §531.0055, and Texas 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 Texas Health and Safety Code, Chapter 1001.

The proposed repeals affect Texas Government Code, §531.0055; and Texas Health and Safety Code, §§533.047, 534.053, 534.058, and 1001.075.

§412.321. References.
§412.322. Distribution.

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

Filed with the Office of the Secretary of State on January 22, 2009.

TRD-200900284
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: March 8, 2009
For further information, please call: (512) 458-7111 x6972

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DIVISION 1. GENERAL PROVISIONS

25 TAC §§412.301, 412.303, 412.304

STATUTORY AUTHORITY

The proposed new rules are authorized by Texas Health and Safety Code, §534.053, which requires the department to ensure that certain community-based services are available in each service area; Texas Health and Safety Code, §534.058, which requires the department to develop standards of care for the services provided by local mental health authorities and their subcontractors; and Texas Government Code, §531.0055, and Texas 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 Texas Health and Safety Code, Chapter 1001.

The proposed new rules affect Texas Government Code, §531.0055; and Texas Health and Safety Code, §§533.047, 534.053, 534.058, and 1001.075.

§412.301. Purpose and Application.

(a) The purpose of this subchapter is to establish performance requirements and standards for the provision of mental health community services, as authorized by the Texas Health and Safety Code, §534.052.

(b) This subchapter applies to persons and entities with which the department contracts, including local mental health authorities (LMHA), managed care organizations (MCO), providers of mental health rehabilitative services, as defined in §419.453 of this title (relating to Definitions), and providers of mental health case management services, as defined in §412.403 of this title (relating to Definitions), and requires that they ensure the performance requirements and standards in this subchapter are met in the provision of mental health community services.

§412.303. Definitions.

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

(1) Access--The ability to obtain mental health community services based upon components such as availability and acceptability of services to the individual, or the individual's Legally Authorized Representative (LAR) on the individual's behalf, transportation, distance, hours of operation, language, and the cultural competency of staff members. Barriers to access may be structural, financial, or specific to the individual.

(2) Adolescent--An individual who is at least 13 years of age, but younger than 18 years of age.

(3) Adult--An individual who is 18 years of age or older.

(4) Advanced practice nurse--A staff member who is a registered nurse approved by the Texas Board of Nursing as a clinical nurse specialist in psychiatric/mental health or nurse practitioner in psychiatric/mental health, in accordance with Texas Occupations Code, Chapter 301.

(5) Advocacy--Support for an individual or family member in expressing and resolving issues or concerns regarding access to or quality and appropriateness of services.

(6) Appeal--A mechanism for an independent review of an adverse determination.

(7) Assessment--A systematic process for measuring an individual's service needs.

(8) Child--An individual who is at least three years of age, but younger than 13 years of age.

(9) Competency--Demonstrated knowledge and skilled performance of a particular activity.

(10) Continuity of services--Services that ensure uninterrupted services are provided to an individual during a transition between service types (e.g., inpatient services, outpatient services) or providers, in accordance with applicable rules (e.g., Chapter 412, Subchapter D of this title (relating to Mental Health Services - Admission, Continuity, and Discharge)). These activities include:

(A) assisting with admissions and discharges;

(B) facilitating access to appropriate services and supports in the community, including identifying and connecting the individual with community resources;

(C) participating in the individual's treatment plan development and reviews;

(D) promoting implementation of the individual's treatment plan or continuing care plan; and

(E) facilitating coordination and follow-up between the individual and the individual's family, as well as with available community resources.

(11) COPSD or co-occurring psychiatric and substance use disorders--The co-occurring diagnoses of psychiatric disorders and substance use disorders.

(12) Credentialing--A process to review and approve a staff member's educational status, experience, and licensure status (as applicable) to ensure that the staff member meets the departmental requirements for service provision. The process includes primary source verification of credentials, establishing and applying specific criteria and prerequisites to determine the staff member's initial and ongoing competency and assessing and validating the staff member's qualification to deliver care. Re-credentialing is the periodic process of reevaluating the staff's competency and qualifications.

(13) Crisis--A situation in which:

(A) the individual presents an immediate danger to self or others; or

(B) the individual's mental or physical health is at risk of serious deterioration; or

(C) an individual believes that he or she presents an immediate danger to self or others or that his or her mental or physical health is at risk of serious deterioration.

(14) Crisis services--Mental health community services or other necessary interventions provided to an individual in crisis.

(15) CSSP or community services specialist--A staff member who, as of August 31, 2004:

(A) received:

(i) a high school diploma; or

(ii) a high school equivalency certificate issued in accordance with the law of the issuing state;

(B) had three continuous years of documented full-time experience in the provision of mental health rehabilitative services or case management services; and

(C) demonstrated competency in the provision and documentation of mental health rehabilitative or case management services in accordance with Chapter 419, Subchapter L of this title (relating to Mental Health Rehabilitative Services) and Chapter 412, Subchapter I of this title (relating to Mental Health Case Management Services).

(16) Cultural competency--Demonstrated knowledge and skill by a staff member to effectively respond to an individual's needs through knowledge of communication, actions, customs, beliefs, and values, within the individual's racial, ethnic, religious beliefs, disability, and social groups.

(17) Department--Department of State Health Services (DSHS).

(18) Department-approved algorithm--An evidence-based process for providing psychiatric care to adults with severe and persistent mental illnesses and children and adolescents with serious emotional disturbance, consisting of consensus-derived guidelines for medication treatment, training and support for physicians, standardized documentation, and patient and family education.

(19) DSM--The current edition of the *Diagnostic Statistical Manual of Mental Disorders* published by the American Psychiatric Association.

(20) Emergency care services--Mental health community services or other necessary interventions directed to address the immediate needs of an individual in crisis in order to assure the safety of the individual and others who may be placed at risk by the individual's behaviors, including, but not limited to, psychiatric evaluations, administration of medications, hospitalization, stabilization or resolution of the crisis.

(21) Face-to-face--A contact with an individual that occurs in person. Face-to-face does not include contacts made through the use of video conferencing or telecommunication technologies, including telemedicine.

(22) Family member--Any person who an individual identifies as being a member of their family.

(23) Family partner--An experienced, trained primary caregiver (i.e., parent of an individual with a mental illness or serious emotional disturbance) who provides peer mentoring, education, and

support to the caregivers of a child who is receiving mental health community services.

(24) HIPAA--The Health Insurance Portability and Accountability Act, 42 U.S.C. §1320d et seq.

(25) Identifying information--The name, address, date of birth, social security number, or any information by which the identity of an individual can be determined either directly or by reference to other publicly available information. The term includes medical records, graphs, and charts that contain an individual's information; statements made by the individual either orally or in writing while receiving mental health community services; videotapes, audiotapes, photographs, and other recorded media; and any acknowledgment that an individual is receiving or has received services from a state facility, LMHA, MCO, or provider.

(26) Indicator--A defined, measurable variable used to monitor the quality or appropriateness of an important aspect of an individual's care or service or an organization's performance of related functions, processes, or outcomes. Indicators can measure activities, events, occurrences, or outcomes for which data can be collected to allow comparison with a threshold, a benchmark, or prior performance.

(27) Individual--A person who is seeking or receiving mental health community services from or through a provider.

(28) LAR or legally authorized representative--A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, including, but not limited to, a parent, guardian, or managing conservator.

(29) LCDC or licensed chemical dependency counselor--A counselor licensed by the department pursuant to the Texas Occupations Code, Chapter 504.

(30) LCSW or licensed clinical social worker--A staff member who is licensed as a clinical social worker by the Texas State Board of Social Worker Examiners in accordance with the Texas Occupations Code, Chapter 505.

(31) LMFT or licensed marriage and family therapist--A staff member who is licensed as a licensed marriage and family therapist by the Texas State Board of Examiners of Marriage and Family Therapists in accordance with Texas Occupations Code, Chapter 502.

(32) LMHA or local mental health authority--An entity designated as the local mental authority by the department in accordance with the Texas Health and Safety Code, §533.035(a).

(33) LOC or level of care--A designation given to the department's standardized packages of mental health community services, based on the uniform assessment and the utilization management guidelines, which recommend the type, amount, and duration of mental health community services to be provided to an individual.

(34) LPC or licensed professional counselor--A staff member who is licensed as a licensed professional counselor by the Texas State Board of Examiners of Professional Counselors in accordance with Texas Occupations Code, Chapter 503.

(35) LPHA or licensed practitioner of the healing arts--A staff member who is:

(A) a physician;

(B) a licensed professional counselor;

(C) a licensed clinical social worker;

(D) a licensed psychologist;

(E) an advanced practice nurse; or

(F) a licensed marriage and family therapist.

(36) LVN or licensed vocational nurse--A staff member who is licensed as a licensed vocational nurse by the Texas Board of Nursing in accordance with Texas Occupations Code, Chapter 301.

(37) Management information system--An information system designed to supply an LMHA or MCO with information needed to plan, organize, staff, direct, and control their operations and clinical decision-making.

(38) MCO or managed care organization--An entity that has a current Texas Department of Insurance certificate of authority to operate as a Health Maintenance Organization (HMO) in the Texas Insurance Code, Chapter 843, or as an approved nonprofit health corporation in the Texas Insurance Code, Chapter 844, and that provides mental health community services pursuant to a contract with the department.

(39) Medical necessity--The need for a service that:

(A) is reasonable and necessary for the diagnosis or treatment of a mental health disorder or a co-occurring psychiatric and substance use disorder (COPSD) in order to improve or maintain an individual's level of functioning;

(B) is provided in accordance with professionally accepted clinical guidelines and standards of practice in behavioral health care;

(C) is furnished in the most clinically appropriate, available setting in which the service can be safely provided;

(D) is provided at a level that is safe and appropriate for the individual's needs and facilitates the individual's recovery; and

(E) could not be omitted without adversely affecting the individual's mental or physical health or the quality of care rendered.

(40) Medical record--The systematic, organized account, compiled by health care providers, of information relevant to the services provided to an individual. This includes an individual's history, present illness, findings on examination, treatment and discharge plans, details of direct and indirect care and services, and notes on progress.

(41) Mental health community services--All services medically necessary to treat, care for, supervise, and rehabilitate individuals who have a mental illness or emotional disorder or a COPSD. These services include services for the prevention of and recovery from such disorders, but do not include inpatient services provided in a state facility.

(42) Mental illness--An illness, disease, or condition (other than a sole diagnosis of epilepsy, dementia, substance use disorder, mental retardation, or pervasive developmental disorder) that:

(A) substantially impairs an individual's thought, perception of reality, emotional process, development, or judgment; or

(B) grossly impairs an individual's behavior as demonstrated by recent disturbed behavior.

(43) Peer provider--A staff member who:

(A) has received:

(i) a high school diploma; or

(ii) a high school equivalency certificate issued in accordance with the law of the issuing state;

(B) has at least one cumulative year of receiving mental health community services; and

(C) is under the direct clinical supervision of an LPHA.

(44) Physician--A staff member who is:

(A) licensed as a physician by the Texas Medical Board in accordance with Texas Occupations Code, Chapter 155; or

(B) authorized to perform medical acts under an institutional permit at a Texas postgraduate training program approved by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or the Texas Medical Board.

(45) Physician assistant--A staff member who is licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners in accordance with Texas Occupations Code, Chapter 204.

(46) Provider--Any person or legal entity that contracts with the department, an LMHA, or an MCO to provide mental health community services to individuals, including that part of an LMHA or MCO directly providing mental health community services to individuals. The term includes providers of mental health case management services and providers of mental health rehabilitative services.

(47) Psychologist--A staff member who is licensed as a psychologist by the Texas State Board of Examiners of Psychologists in accordance with Texas Occupations Code, Chapter 501.

(48) QMHP-CS or qualified mental health professional-community services--A staff member who is credentialed as a QMHP-CS who has demonstrated and documented competency in the work to be performed and:

(A) has a bachelor's degree from an accredited college or university with a minimum number of hours that is equivalent to a major (as determined by the LMHA or MCO in accordance with §412.316(d) of this title (relating to Competency and Credentialing)) in psychology, social work, medicine, nursing, rehabilitation, counseling, sociology, human growth and development, physician assistant, gerontology, special education, educational psychology, early childhood education, or early childhood intervention;

(B) is a registered nurse; or

(C) completes an alternative credentialing process identified by the department.

(49) Recovery--The process by which a person becomes able or regains the ability to live, work, learn, and participate fully in his or her community.

(50) Referral--The process of identifying appropriate services and providing the information and assistance needed to access them.

(51) RN or registered nurse--A staff member who is licensed as a registered nurse by the Texas Board of Nursing in accordance with Texas Occupations Code, Chapter 301.

(52) Restraint--The same meaning as defined in Chapter 415, Subchapter F of this title (relating to Interventions in Mental Health Programs).

(53) Routine care services--Mental health community services provided to an individual who is not in crisis.

(54) Safety monitoring--Ongoing observation of an individual to ensure the individual's safety. An appropriate staff person must be continuously present in the individual's immediate vicinity, provide ongoing monitoring of the individual's mental and physical status, and ensure rapid response to indications of a need for assistance or intervention. Safety monitoring includes maintaining continuous visual contact with frequent face-to-face contacts as needed.

(55) Screening Activities performed by a Qualified Mental Health Professional--Community Services (QMHP-CS) to gather triage information to determine the need for in-depth assessment. The QMHP-CS collects this information through face-to-face or telephone interviews with the individual or collateral. This service includes screenings to determine if the individual's need is emergent, urgent, or routine (which is conducted prior to the face-to-face assessment to determine the need for emergency services).

(56) Seclusion--The same meaning as defined in Chapter 415, Subchapter F of this title.

(57) Staff member--Anyone who works or provides services for an LMHA, MCO, or provider as an employee, contractor, intern, or volunteer.

(58) Support services--Mental health community services delivered to an individual, LAR, or family member(s) to assist the individual in functioning in the individual's chosen living, learning, working, and socializing environments.

(59) Telemedicine--The use of health care information exchanged from one site to another via electronic communications for the health and education of the individual or provider, and for the purpose of improving patient care, treatment, and services. This definition applies only for purposes of this subchapter and does not affect, modify, or relate in any way to other rules defining the term or regulating the service, or to any statutory definitions or requirements.

(60) Uniform assessment--An assessment tool developed by the department that includes, but is not limited to, the Adult Texas Recommended Assessment Guidelines (TRAG), the Children and Adolescent Texas Recommended Assessment Guidelines, and the department-approved algorithms.

(61) Urgent care services--Mental health community services or other necessary interventions provided to persons in crisis who do not need emergency care services, but who are potentially at risk of serious deterioration.

(62) Utilization management exception--The authorization of additional amounts of services based on medical necessity when the individual has reached the maximum service units of their currently authorized level of care (LOC).

(63) Utilization management guidelines--Guidelines developed by the department that establish the type, amount, and duration of mental health community services for each LOC.

(64) Volunteer--A person who receives no remuneration for the provision of time, individual attention, or assistance to individuals receiving mental health community services from entities or providers governed by this subchapter. Volunteers may include:

(A) community members;

(B) family members of individuals served when not acting in their capacity as a family member;

(C) employees when not acting in their capacity as employees; and

(D) individuals served when acting on behalf of another individual.

§412.304. Responsibility for Compliance.

(a) Compliance with Divisions 2 - 3 of this subchapter requires:

(1) the LMHA and MCO to comply with the applicable sections and subsections contained in Divisions 2 - 3 of this subchapter;

(2) the LMHA and MCO to obligate by contract the providers in their networks to comply with the applicable sections and subsections contained in Divisions 2 - 3 of this subchapter;

(3) the LMHA and MCO to monitor their providers for compliance with the applicable sections and subsections contained in Divisions 2 - 3 of this subchapter; and

(4) providers of mental health case management or mental health rehabilitative services to comply with §412.311(e) of this title (relating to Leadership), §412.312 of this title (relating to Environment of Care and Safety), §412.313 of this title (relating to Rights and Protection), §412.314(e) of this title (relating to Access to Mental Health Community Services), §412.315 of this title (relating to Medical Records System), and §412.316 of this title (relating to Competency and Credentialing), contained in Division 2 of this subchapter, and with all the sections in Division 3 of this subchapter.

(b) Providers must comply with the department's *Utilization Management Guidelines,* which are incorporated by reference, if contractually obligated to provide any mental health community services, including mental health rehabilitative, mental health case management, supported housing, supported employment, or Assertive Community Treatment (ACT). The department is responsible for monitoring compliance by providers that contract with the department and the LMHA and MCO are responsible for requiring and monitoring compliance of providers in their networks.

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

Filed with the Office of the Secretary of State on January 22, 2009.

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Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 458-7111 x6972

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DIVISION 2. ORGANIZATIONAL STANDARDS

25 TAC §§412.311 - 412.318

STATUTORY AUTHORITY

The proposed new rules are authorized by Texas Health and Safety Code, §534.053, which requires the department to ensure that certain community-based services are available in each service area; Texas Health and Safety Code, §534.058, which requires the department to develop standards of care for the services provided by local mental health authorities and their subcontractors; and Texas Government Code, §531.0055, and Texas 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 Texas Health and Safety Code, Chapter 1001.

The proposed new rules affect Texas Government Code, §531.0055; and Texas Health and Safety Code, §§533.047, 534.053, 534.058, and 1001.075.

§412.311. Leadership.

(a) Organizational planning and communication. The LMHA and MCO must define and implement organizational plans and systems as described in this subchapter (e.g., quality management plan, utilization management plan) and ensure that there are mechanisms in place that facilitate effective communication throughout the organization to promote the provision of quality mental health community services.

(b) Management of key processes and functions. The LMHA and MCO must define organizational and clinical processes and functions, including performance activities, as well as:

(1) allocate adequate, appropriate resources; and

(2) provide oversight for such processes and functions.

(c) Management information system. The LMHA, MCO, and provider must ensure their management information systems provide timely, accurate, and accessible information that supports clinical, administrative, and fiscal decision-making.

(d) Consumer advocacy. The LMHA and MCO must encourage and support advocacy for individuals accessing mental health community services.

(e) Conflict of interest and dual relationships. The LMHA and MCO must develop and implement policies and procedures to ensure that all staff members refrain from activities and relationships whereby personal, financial, professional, or other relationships could compromise or interfere with independent judgment creating a conflict of interest or otherwise having the potential to harm or exploit individuals and families.

(f) Collaboration with other health care agencies and community resources. The LMHA and MCO must demonstrate efforts to collaborate with other health care agencies and community resources to address the physical and behavioral health care needs of individuals, as well as to ensure that these needs are met.

§412.312. Environment of Care and Safety.

(a) Safe environment. The LMHA, MCO, and provider must:

(1) ensure service delivery sites (including, but not limited to, facilities and vehicles) are safe, sanitary, and free from hazards, including but not limited to:

(A) hand washing facilities and supplies in restrooms and in areas where staff have routine physical contact with individuals (e.g., exam rooms, medication areas, laboratories);

(B) a utility area with necessary equipment for the safe and required cleaning or disposal of instruments, equipment, and sharps;

(C) locked areas for storing drugs, needles, syringes, hazardous materials, other potentially dangerous equipment, and toxic chemical products; and

(D) adequate prevention of exposure to tobacco smoke and other environmental pollutants.

(2) ensure delivery sites are prepared to manage onsite life threatening emergencies, and that each site will have:

(A) a written plan for the management of onsite medical emergencies requiring ambulance services, hospitalization, or hospital treatment;

(B) emergency resuscitative drugs, supplies, and equipment appropriate to the needs of individuals and staff qualifications;

(C) written protocols and instructions for disasters and other emergencies; and

(D) documented disaster drills appropriate for local conditions.

(3) comply with the most current edition of the National Fire Protection Association's Life Safety Code, and related codes, standards, and other applicable requirements;

(4) implement an infection control plan and procedures for group residential services, clinics, and other areas where a high volume of people congregate, that address the prevention, education, management, and monitoring of significant infections. Components addressed in the plan must include:

(A) prevention and management of infection in the service delivery site(s);

(B) reporting of reportable diseases as required by Chapter 97, Subchapter A of this title (relating to Control of Communicable Diseases);

(C) compliance with the Human Immunodeficiency Virus Services Act (Texas Health and Safety Code, §85.001 et seq.), the Communicable Disease Prevention and Control Act (Texas Health and Safety Code, §81.001 et seq.), and other applicable laws (e.g., the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 et seq.; and the Rehabilitation Act of 1973, 29 U.S.C. §701 et seq.);

(D) identification of illnesses and conditions for which an individual's participation in mental health community services is safely allowed;

(E) identification of illnesses and conditions for which an individual's participation in mental health community services is restricted and the procedures for minimizing exposure and facilitating an individual's transfer to a more appropriate setting;

(5) implement safeguards regarding hazardous equipment and weather; and

(6) implement procedures for the disposal of biohazardous wastes that minimize the risks of contamination, injury, and disease transmission.

(b) Sufficient staff. The provider must have sufficient number of qualified and competent staff members on duty to ensure the safety of individuals and adequacy of mental health community services, including responding to crises during the provision of mental health community services.

(c) Compliance with state and federal law. The provider must comply with all applicable state and federal law and regulations, including those relating to:

(1) blood borne pathogens;

(2) food borne pathogen exposure controls; and

(3) tuberculosis exposure controls.

(d) Limited use of restraint or seclusion.

(1) Restraint. In outpatient settings, a provider may only use restraint if the intervention is:

(A) necessary to address a behavioral health emergency, as defined in Chapter 415, Subchapter F of this title (relating to Interventions in Mental Health Programs); and

(B) performed according to the department's rules described in Chapter 415, Subchapter F of this title.

(2) Seclusion. Seclusion is prohibited in outpatient settings with the exception of partial hospitalization programs for children or adolescents. A provider may only use seclusion in those programs if the conditions in paragraph (1)(A) - (B) of this subsection are met.

§412.313. Rights and Protection.

(a) Non-coercive policy. The LMHA, MCO, and provider must ensure that an individual's refusal of a particular mental health community service (e.g., psychoactive medication) does not preclude the individual from accessing other medically necessary mental health community services.

(b) Non-discrimination. The LMHA, MCO, and provider may not unlawfully discriminate against any individual based on race, color, national origin, religion, sex, age, or disability. The LMHA and MCO and provider may not deny medically necessary mental health community services based on an individual's sexual orientation or political affiliation.

(c) Initial and ongoing eligibility. In determining an individual's initial and ongoing eligibility for any service, an LMHA, MCO, and provider may not exclude an individual based on the following factors:

(1) the individual's past or present mental illness or substance use diagnosis or services;

(2) the individual's past or present involvement in the criminal or juvenile justice system;

(3) medications prescribed to the individual in the past or present;

(4) the presumption of the individual's inability to benefit from treatment;

(5) the individual's use or continued use of alcohol, tobacco, or other drugs; or

(6) the individual's level of success in prior treatment episodes.

(d) Protection against abuse, neglect, and exploitation. The LMHA, MCO, and provider must comply with the requirements described in Chapter 414, Subchapter L of this title (relating to Abuse, Neglect, and Exploitation in Local Authorities and Community Centers).

(e) Dignity and rights. The LMHA, MCO, and provider must implement procedures that address the rights of individuals in compliance with applicable state and federal laws, regulations, and department rules described in Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services), and must provide individuals the right to choose from the list of providers within the LMHA's or MCO's network if there is more than one provider available.

(f) Charges for mental health community services. The LMHA and MCO and provider must comply with all applicable federal and state laws and department rules described in Chapter 412, Subchapter C of this title (relating to Charges for Community Services) regarding the establishment of charges and the collection of fees for the provision of mental health community services.

(g) Confidentiality. The LMHA and MCO and provider must comply with all applicable federal and state laws, rules, and regulations governing confidentiality of identifying information of individuals with mental illness and/or substance use disorders, including those described in Chapter 414, Subchapter A of this title (relating to Protected Health Information) and 42 Code of Federal Regulations (CFR) Part 2 (Confidentiality of Alcohol and Drug Abuse Patient Records).

(h) Research. If the LMHA or MCO or provider conducts research, then the research must be conducted in accordance with applicable state and federal laws, rules, and regulations, including 45 CFR Part 46 (Protection of Human Subjects).

§412.314. Access to Mental Health Community Services.

(a) Adequate provider network. The LMHA and MCO must maintain a provider network that is adequate and qualified to provide all mental health community services that the LMHA and MCO are required to provide under a contract with the department.

(b) Crisis screening and response system. The LMHA and MCO must have a crisis screening and response system in operation 24 hours a day, every day of the year, that is available to individuals throughout its contracted service delivery area. The telephone system to access the crisis screening and response system must include a toll-free crisis hotline number and be easily accessible and well publicized. Calls to the crisis hotline must be answered by a hotline staff member who is trained in compliance with this subchapter. The hotline must have teletypewriter (TTY) capabilities or other assistive technology that is available and effective.

(c) Telephone access. In addition to the crisis screening and response system described in subsection (b) of this section, the LMHA and MCO must ensure the availability of a telephone system and call center that allows individuals to contact the LMHA or MCO through a toll-free number that must:

(1) operate without using telephone answering equipment at least on business days during normal business hours, except on national holidays, due to uncontrollable interruption of service, or with prior approval of the department;

(2) have sufficient staff to operate efficiently;

(3) collect, document, and store detailed information, including special needs information, on all telephone inquiries and calls;

(4) during times other than those described in paragraph (1) of this subsection provide electronic call answering methods that include an outgoing message providing the crisis hotline telephone number, in languages relevant to the service area, for callers to leave a message; and

(5) return routine calls before the end of the next business day for all messages left after hours.

(d) Timely services based on need. The LMHA and MCO must arrange mental health services for an individual within the following time frames.

(1) Crisis services.

(A) Hotline calls. For all calls to the toll-free crisis hotline:

(i) the call must be answered by a staff member within 30 seconds, on average, at least 95 percent of the time; and

(ii) if the call is identified as a potential crisis, a QMHP-CS must begin a telephone screening immediately but no later than one minute after the call is so identified.

(B) Emergency care services. If during a screening it is determined that an individual is experiencing a crisis that may require emergency care services, the QMHP-CS must:

(i) take immediate action to address the emergency situation to ensure the safety of all parties involved;

(ii) activate the immediate screening and assessment processes as described in §412.321 of this title (relating to Crisis Services); and

(iii) provide or obtain mental health community services or other necessary interventions to stabilize the crisis.

(C) Urgent care services. If the screening indicates that an individual needs urgent care services, a QMHP-CS must within eight hours of the initial incoming hotline call or notification of a potential crisis situation:

(i) perform a face-to-face assessment; and

(ii) provide or obtain mental health community services or other necessary interventions to stabilize the crisis.

(2) Routine care services. If the screening indicates that an individual needs routine care services, a QMHP-CS must perform a uniform assessment within 14 days after the screening. If the assessment indicates an LOC for routine care services, the individual must begin receiving services immediately. When the provision of the service package is not possible because services are at capacity, the individual must be referred to an available practitioner appropriate to meet the individual's needs or be placed on a waiting list for services, subject to the following exceptions:

(A) individuals eligible for Medicaid who are determined to be in need of Mental Health Case Management, under Chapter 412, Subchapter I of this title, or Mental Health Rehabilitative Services, under Chapter 419, Subchapter L of this title, cannot be placed on a waiting list and must be served.

(B) individuals eligible for Medicaid who are determined to need services other than Mental Health Case Management, under Chapter 412, Subchapter I of this title, and Mental Health Rehabilitative Services, under Chapter 419, Subchapter L of this title, must be referred to appropriate, available practitioners of that service. Only if an appropriate Medicaid practitioner is not available may the individual be placed on a waiting list. All efforts undertaken to refer Medicaid individuals must be documented.

(e) Communication with individuals. The LMHA, MCO, and provider must ensure effective communication with the individual and LAR (if applicable) in an understandable format as appropriate to meet the needs of individuals, which may require using:

(1) interpretative services;

(2) translated materials; or

(3) a staff member who can effectively respond to the cultural (e.g., customs, beliefs, actions, and values) and language needs of the individual and LAR (if applicable).

(f) Service information. The LMHA and MCO must proactively disseminate to individuals and their LAR (if applicable) information about mental illness and the LMHA's or MCO's mental health community services in a format and language that is easily understood and based on the demographics for any group comprising more than 10 percent of the population in the local service area. Information about mental illness and the LMHA's or MCO's community services must be in a format and language that is easily understood by individuals with a disability (e.g., deafness, hard of hearing, and blindness).

(g) Access to emergency medical and crisis services. The LMHA and MCO must develop procedures for its providers' use in accessing emergency medical and crisis services for individuals.

(h) Continuity of services. The LMHA and MCO must ensure that individuals:

(1) are provided continuity of services as defined by the department; and

(2) are informed of whom to contact regarding continuity and coordination of their services, in accordance with Chapter 412, Subchapter D of this title (relating to Mental Health Services--Admission, Continuity, and Discharge).

(i) Referral for physical health services. If a nursing or medical assessment indicates physical health needs outside the scope of the provider's competency, credentialing, or capacity to treat, the LMHA and MCO must make and document appropriate referrals to other healthcare providers and provide adequate follow up at subsequent visits to confirm access to the referrals.

§412.315. Medical Records System.

(a) Maintenance of medical records. The LMHA, MCO, and the provider must ensure:

(1) protection against unauthorized access, disclosure, modification or destruction of medical records, whether accidental or deliberate;

(2) the availability, integrity, utility, authenticity, and confidentiality of information within the medical record;

(3) a current, organized, legible, and comprehensive records system that:

(A) conforms to good professional practice;

(B) permits effective clinical review and audit; and

(C) facilitates prompt and systematic retrieval of information;

(4) a medical records system with sufficient redundancy to ensure access to individual records; and

(5) compliance with applicable federal and state laws, rules, and regulations, including HIPAA, 42 CFR Part 2, and the requirements described in Chapter 414, Subchapter A of this title (relating to Protected Health Information).

(b) Disaster recovery plan. The LMHA, MCO, and the provider must maintain a written disaster recovery plan for information resources that will ensure service continuity.

§412.316. Competency and Credentialing.

(a) Competency of staff members, including volunteers. The LMHA, MCO, and provider must implement a process to ensure the competency of staff members prior to providing services that, at a minimum:

(1) ensures services are provided by staff members who are operating within the scope of their license, job description, or contract specification;

(2) ensures that the mental health community services provided by peer providers are limited to mental health rehabilitative, supported employment, supported housing, parent support group, and family partner services; and

(3) defines competency-based expectations for each position as follows:

(A) required competencies must be included for all staff members, including adequate, accurate knowledge of:

(i) the nature of severe and persistent mental illness and serious emotional disturbances;

(ii) the recovery and resiliency model of mental illness and serious emotional disturbance;

(iii) the dignity and rights of an individual, as described in Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services);

(iv) identifying, preventing, and reporting abuse, neglect, and exploitation, in accordance with Chapter 414, Subchapter L of this title (relating to Abuse, Neglect, and Exploitation in Local Authorities and Community Centers);

(v) individual confidentiality, as described in Chapter 414, Subchapter A of this title (relating to Protected Health Information) and other relevant state and federal laws affecting confidentiality of medical records, including Title 42 CFR Part 2;

(vi) interacting with an individual who has a physical disability such as a hearing or visual impairment;

(vii) responding to an individual's language and cultural needs through knowledge of customs, beliefs, and values of various, racial, ethnic, religious, and social groups;

(viii) exposure control of blood borne pathogens;

(ix) identification of an individual as being in a crisis and accessing emergency or urgent care services;

(x) proper documentation of services provided; and

(xi) planning and training for responding to severe weather, disasters, and bioterrorism;

(B) critical competencies must be included for positions in which a staff member's primary job duties are related to individual service contacts and interactions and include, but are not limited to, adequate and accurate knowledge of:

(i) cardio pulmonary resuscitation (CPR);

(ii) first aid;

(iii) safe management of verbally and physically aggressive behavior;

(iv) utilization of assistive technology such as communication devices with individuals who are deaf or hard of hearing; and

(v) seizure response and assessment;

(C) specialty competencies must be included for positions in which a staff member performs specialized services and tasks and include adequate and accurate knowledge of specialized services and tasks, such as:

(i) the requirements of this subchapter;

(ii) age appropriate clinical assessment including the uniform assessment;

(iii) age appropriate engagement techniques (e.g., motivational interviewing);

(iv) use of telemedicine equipment;

(v) the utilization management guidelines;

(vi) developing and implementing an individualized treatment plan;

(vii) appropriate actions to take in a crisis (e.g., screening, intervention, management and if applicable, suicide/homicide precautions);

(viii) services for co-occurring psychiatric and substance use disorders described in Chapter 411, Subchapter N of this

title (relating to Standards for Services to Individuals with Co-Occurring Psychiatric and Substance Use Disorders (COPSD));

(ix) accessing resources within the local community;

(x) strategies for effective advocacy and referral for an individual;

(xi) infection control;

(xii) recognition, reporting, and recording of side effects, contraindications, and drug interactions of psychoactive medication;

(xiii) age appropriate rehabilitative approaches;

(xiv) proficiency in specimen collection;

(xv) the peer-provider or consumer-operated service model;

(xvi) assessment and intervention with children, adolescents, and families; and

(xvii) clinical specialties directly related to the services to be performed.

(D) crisis hotline competencies must be included for positions in which a staff member routinely answers the crisis hotline and include adequate and accurate knowledge of:

(i) the nature of severe and persistent mental illness and serious emotional disturbances and COPSD;

(ii) behavioral health crisis situations;

(iii) operating a telephone system to access behavioral health crisis screening and response;

(iv) age appropriate crisis intervention and response;

(v) utilization of assistive technology such as communication devices with individuals who are deaf or hard of hearing;

(vi) advocacy for treatment in the most clinically appropriate, available environment; and

(vii) applicable privacy laws, rules, and regulations including those described in Chapter 414, Subchapter A of this title (relating to Protected Health Information) and in Title 42 CFR Part 2.

(E) telemedicine competencies must be included for positions in which a staff member's job duties are related to assisting with telemedicine services and include adequate and accurate knowledge of:

(i) operation of the telemedicine equipment; and

(ii) how to use the equipment to adequately present the individual.

(4) requires staff members to demonstrate competencies in the following manner:

(A) all staff members must demonstrate required competencies before contact with individuals, confidential information, or protected health information and periodically throughout the staff member's tenure of employment or association with the LMHA, MCO, or provider;

(B) all staff members in positions that require critical competencies must demonstrate the critical competencies before contact with individuals and periodically throughout the staff member's or volunteer's tenure of employment or association with the LMHA, MCO, or provider;

(C) all staff members in positions that require specialty competencies must demonstrate the specialty competencies before providing the specialized service(s) or performing the specialized task(s) and periodically throughout the staff member's or volunteer's tenure of employment or association with the LMHA, MCO, or provider; and

(D) all staff members in positions that require crisis hotline competencies must demonstrate those competencies before providing crisis hotline services and at least annually throughout the staff member's or volunteer's tenure of employment or association with the LMHA, MCO, or provider.

(b) Competency of crisis services providers. The LMHA and MCO must develop and implement policies and procedures governing the provision of crisis services to ensure that providers with which they contract or employ for the provision of crisis services are trained in:

(1) crisis access and age appropriate assessment and intervention services;

(2) advocacy for the most clinically appropriate, available environment; and

(3) community referral resources.

(c) Credentialing and appeals. Before providing services, the LMHA and MCO must:

(1) implement a timely credentialing and re-credentialing process for all its licensed staff members, peer providers, family partners, and every QMHP-CS and CSSP;

(2) ensure that documentation verifying a staff member's credentialing and re-credentialing is maintained in the staff member's personnel records;

(3) have a process for staff members to appeal credentialing and re-credentialing decisions; and

(4) require providers to:

(A) use the LMHA's or MCO's credentialing and re-credentialing and appeals processes for all of the provider's licensed staff, QMHP-CSs, CSSPs, peer providers, family partners, and utilization management job functions; or

(B) implement a credentialing and re-credentialing process for all of the provider's licensed staff, QMHP-CSs, CSSPs, peer providers, family partners, and utilization management job functions that meets the LMHA's or MCO's credentialing and re-credentialing criteria and have a process for those staff members to appeal credentialing and re-credentialing decisions.

(d) Additional requirements for credentialing a QMHP-CS. For credentialing as a QMHP-CS who is not a registered nurse, the credentialing and re-credentialing process described in subsection (c) of this section must include:

(1) determining the minimum number of coursework hours that is equivalent to a major and whether a combination of coursework hours in the specified areas is acceptable;

(2) reviewing the individual's coursework; and

(3) justifying and documenting the credentialing decisions; or

(4) completing an alternative credentialing process identified by the department.

(e) Additional requirements for credentialing as a CSSP. For credentialing as a CSSP, the credentialing and re-credentialing process described in subsection (c) of this section must include:

(1) verifying a high school diploma or high school equivalent certificate issued in accordance with the law of the issuing state;

(2) verifying three continuous years of documented full-time experience in the provision of mental health case management or rehabilitative services prior to August 31, 2004;

(3) reviewing the staff member's provision and documentation of mental health case management or rehabilitative services; and

(4) certifying, justifying, and documenting the credentialing decisions.

(f) Additional requirements for credentialing as a peer provider. For credentialing as a peer provider, the credentialing and re-credentialing process described in subsection (c) of this section or the alternative credentialing by an organization recognized by the department must, at minimum, include:

(1) verifying a high school diploma or high school equivalent certificate issued in accordance with the law of the issuing state;

(2) verifying at least one cumulative year of receiving mental health community services for a disorder that is treated in the target population for Texas;

(3) demonstration of competency in the provision and documentation of mental health rehabilitative services, supported employment, or supported housing; and

(4) justifying and documenting the credentialing decisions.

(g) Additional requirements for utilization management job functions. For credentialing as a staff member who performs utilization management job functions, the credentialing and re-credentialing process described in subsection (c) of this section must include:

(1) the staff member's job description indicating the performance of utilization management functions;

(2) if the staff member is not the utilization management physician, the staff member's job description indicating they neither provide services nor supervise service providers;

(3) documenting licenses;

(4) documenting training and supervision received; and

(5) justifying and documenting credentialing decisions.

(h) Maintaining documented personnel information. The LMHA, MCO, and provider must maintain personnel files for each staff member that include:

(1) a current, signed job description for each staff member;

(2) documented, periodic performance reviews;

(3) copies of current credentials and training; and

(4) criminal background checks.

§412.317. Quality Management.

(a) Quality management plan. The LMHA and MCO must develop a written quality management plan that includes:

(1) the quality management program description and work plan;

(2) measurable objective indicators to detect the need for improvement;

(3) procedures and timelines for taking appropriate action when problems are identified; and

(4) approval by the LMHA or MCO governing body.

(b) Quality management program. The LMHA and MCO must implement a quality management program that includes:

(1) a structure that ensures the program is implemented system-wide;

(2) allocation of adequate resources for implementation;

(3) oversight by professionals with adequate and appropriate experience in quality management;

(4) activities and processes that address identified clinical and organizational problems including fidelity and data integrity;

(5) periodic reporting of quality management program activities to its governing body, providers and other appropriate staff members and community stakeholders such as peer and family organizations;

(6) processes to systematically monitor, analyze, and improve performance of provider services and outcomes for individuals;

(7) review of the provider's treatment to determine:

(A) whether it is consistent with the department's approved evidenced-based practices and the fidelity manual; and

(B) the accuracy of assessments and treatment planning;

(8) ongoing monitoring of the quality of crisis services, access to services, service delivery, and continuity of services;

(9) provision of technical assistance to providers related to quality oversight necessary to improve the quality and accountability of provider services;

(10) use of reports and data from the department to inform performance improvement activities and assessment of unmet needs of individuals, service delivery problems, and effectiveness of authority functions for the local service area;

(11) mechanisms to measure, assess, and reduce incidents of abuse, neglect, and exploitation;

(12) mechanisms to improve individuals' rights protection processes;

(13) risk management processes such as competency determinations, and the management and reporting of incidents and deaths; and

(14) coordination of activities and information management with the utilization management (UM) program, including participation in UM oversight activities.

(c) The LMHA and MCO must establish an integrated system to sufficiently monitor the quality management program for effectiveness on a regular basis and update the quality management plan as needed.

§412.318. Utilization Management.

(a) Utilization management plan. The LMHA and MCO must develop a written utilization management plan that includes:

(1) the utilization management program plan description and work plan;

(2) requirements relating to the utilization management committee credentials, job functions, meetings, and training;

(3) how the utilization management program's effectiveness in meeting goals will be evaluated;

(4) how improvements will be made on a regular basis;

(5) the oversight and control mechanisms to ensure that UM activities meet required standards when they are delegated to an administrative services organization or a DSHS-approved entity; and

(6) approval by the LMHA or MCO governing body.

(b) Utilization management program. The LMHA and MCO must implement a utilization management program under the direction of a psychiatrist licensed in Texas as required by its contract with the department, and in accordance with the utilization management guidelines, as updated and amended.

(c) Authorization of services. The LMHA and MCO must ensure that it has a timely authorization system in place to ensure medically necessary services are delivered without delay and with prior authorization, except that the delivery of crisis services does not require prior authorization but rather must be authorized subsequent to delivery. The LMHA and MCO will review requests for authorization of services, determine if services should be authorized and if so which services to authorize. Services must be authorized using the department's utilization management guidelines and based on the uniform assessment, diagnosis, additional clinical information submitted by the requestor, and clinical judgment. The determination and documentation of services to be authorized will occur according to the following timeframes:

(1) crisis intervention services--within two business days of the date of service;

(2) inpatient services--within sufficient time to ensure medically necessary services are delivered without delay;

(3) all other mental health community services, including outpatient and add-on services upon receipt but no later than three business days and prior to service delivery; and

(4) reauthorization for continuing services according to established timeframes in the utilization management guidelines, as updated and amended.

(d) Appeal and Medicaid fair hearing procedures. The LMHA and MCO must implement procedures to give notice of the right to a timely and objective appeal process for all individuals receiving community mental health services, in accordance with §401.464 of this title (relating to Notification and Appeals Process). For individuals eligible for Medicaid, the LMHA and MCO must implement procedures that provide notice of the right to request a fair hearing, as described in Title 1, Chapter 357, Subchapter A (relating to Uniform Fair Hearing Rules for the Medicaid, TANF, and Food Stamp Programs), to an individual whose service or benefits are denied, reduced, suspended, or terminated. The procedures regarding notice of the right to a Medicaid fair hearing must comply with department policy, which may be included in contract provisions.

(e) Waiting list maintenance requirements. The LMHA must comply with the department's policy on waiting list maintenance requirements, which may be included in contract provisions and is subject to the requirements set forth in §412.314(d)(2) of this title (relating to Access to Mental Health Community Services).

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

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DIVISION 3. STANDARDS OF CARE

25 TAC §§412.321 - 412.327

STATUTORY AUTHORITY

The proposed new rules are authorized by Texas Health and Safety Code, §534.053, which requires the department to ensure that certain community-based services are available in each service area; Texas Health and Safety Code, §534.058, which requires the department to develop standards of care for the services provided by local mental health authorities and their subcontractors; and Texas Government Code, §531.0055, and Texas 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 Texas Health and Safety Code, Chapter 1001.

The proposed new rules affect Texas Government Code, §531.0055; and Texas Health and Safety Code, §§533.047, 534.053, 534.058, and 1001.075.

§412.321. Crisis Services.

(a) Coordinating provision of crisis services. The LMHA and MCO must develop and implement policies and procedures governing the provision of crisis services that:

(1) identify providers' roles and responsibilities in responding to a crisis;

(2) describe the coordination of crisis services to be required among providers of crisis services, law enforcement, the judicial system, and other community entities; and

(3) comply with Chapter 419, Subchapter L of this title (relating to Mental Health Rehabilitative Services).

(b) Immediate screening and assessment.

(1) Screening and assessment. All providers of crisis services must be available 24 hours a day, every day of the year, to perform immediate screenings and assessments of individuals in crisis, including assessments to determine risk of deterioration and immediate danger to self or others. Crisis assessments cannot be delegated to law enforcement officials.

(2) QMHP-CS assessment. Individuals experiencing a crisis, as determined by a QMHP-CS screening, must be assessed face-to-face or via telemedicine by someone who is at least credentialed as a QMHP-CS within one hour after the individual presents to the provider in a crisis, either via the crisis hotline or a face-to-face encounter (e.g., walk-in). The QMHP-CS must provide ongoing crisis services until the crisis is resolved or the individual is placed in a clinically appropriate environment.

(c) LPHA consultation. An LPHA must always be available for consultation with the QMHP-CS.

(d) Physician assessment. If the individual requires emergency care services, as determined by the QMHP-CS's assessment of risk of deterioration and danger as described in subsection (b) of this

section, then the provider of crisis services must have a physician, preferably a psychiatrist, perform a face-to-face or telemedicine assessment of the individual as soon as possible, but not later than 12 hours after the QMHP-CS's assessment to determine the need for emergency services.

(e) Documenting crisis services. The provider of crisis services must maintain documentation of the crisis services, including:

(1) the date the service was provided;

(2) the beginning and end time of the crisis contact;

(3) the name and any other identifying information of the individual to whom the service was provided (if given);

(4) the location where the service was provided;

(5) the behavioral description of the presenting problem;

(6) lethality (e.g., suicide, violence);

(7) substance use or abuse;

(8) trauma, abuse, or neglect;

(9) the outcome of the crisis (e.g., individual in hospital, individual with friend and scheduled to see doctor at 9:00 a.m. the following day);

(10) the names and titles of staff members involved;

(11) all actions (including rehabilitative interventions and referrals to other agencies) used by the provider to address the problems presented;

(12) the response of the individual, and if appropriate, the response of the LAR and family members;

(13) the signature of the staff member providing the service and a notation as to whether the staff member is an LPHA or a QMHP-CS;

(14) any pertinent event or behavior relating to the individual's treatment which occurs during the provision of the service; and

(15) follow up activities, which may include referral to another provider.

(f) Communication of crisis contacts. If an individual who is currently receiving mental health services has experienced a crisis and has been assessed in accordance with subsection (b) of this section, the provider of crisis services must communicate in writing (e.g., e-mail or fax) the details of the crisis contact to the provider of ongoing mental health services to ensure that the individual receives continuity of care and treatment and include such communication in the medical record. This crisis contact communication:

(1) may not disclose any substance abuse-related information unless disclosed in compliance with federal law as described in 42 CFR Part 2;

(2) must take place no later than the next business day after conclusion of the crisis contact; and

(3) may disclose mental health information for the purpose of continuity of care and treatment without the individual's consent if disclosure is made in accordance with:

(A) Texas Health and Safety Code, §533.009 (relating to Exchange of Patient and Client Records), when the provider of ongoing services is part of the department's service delivery system; or

(B) in accordance with Texas Health and Safety Code, §611.004(a)(7) (relating to the Authorized Disclosure of Confidential Information other than in Judicial or Administrative Proceeding), when the provider of ongoing services is not part of the department's service delivery system.

§412.322. Provider Responsibilities for Treatment Planning and Service Authorization.

(a) Assessment and documentation. At the first routine face-to-face or telemedicine contact with an individual seeking routine care services, as described in §412.314(d)(2) of this title (relating to Access to Mental Health Community Services), a QMHP-CS with appropriate supervision and training must perform an assessment of the individual. The assessment must be documented and must include:

(1) the individual's identifying information;

(2) completion of the appropriate uniform assessment(s) and assessment guideline calculations;

(3) present status and relevant history, including education, employment, housing, legal, military, developmental, and current available social and support systems;

(4) co-occurring mental illness, emotional disturbance, substance abuse, chemical dependency, or developmental disorder;

(5) relevant past and current medical and psychiatric information, which may include trauma history;

(6) information from the individual and LAR (if applicable) regarding the individual's strengths, needs, natural supports, describe community participation, responsiveness to previous treatment, as well as preferences for and objections to specific treatments;

(7) if the individual is an adult without an LAR, the needs and desire of the individual for family member involvement in treatment and mental health community services;

(8) the identification of the LAR's or family members' need for education and support services related to the individual's mental illness or emotional disturbance and the plan to facilitate the LAR's or family members' receipt of the needed education and support services;

(9) recommendations and conclusions regarding treatment needs; and

(10) date, signature, and credentials of staff member completing the assessment.

(b) Diagnostics. The diagnosis of a mental illness must be:

(1) rendered by an LPHA, acting within the scope of his/her license, who has interviewed the individual, either face-to-face or via telemedicine;

(2) based on all five axes of the current DSM;

(3) documented in writing, including the date, signature, and credentials of the person making the diagnosis; and

(4) supported by and included in the assessment.

(c) Provision of services. The LMHA, MCO, and provider must require each provider to implement procedures to ensure that individuals are provided mental health community services based on:

(1) the department's uniform assessment and utilization management guidelines;

(2) medical necessity as determined by an LPHA; and

(3) health management needs as determined by a physician, physician assistant, or registered nurse.

(d) Prerequisites to provision of services.

(1) Routine care services. For routine care services, before providing mental health community services to an individual, the provider must:

(A) obtain authorization from the department or its designee for the type(s), amount, and duration of mental health community services to be provided to the individual in accordance with the appropriate uniform assessment and utilization management guidelines;

(B) obtain a determination of medical necessity from an LPHA; and

(C) in collaboration with the individual and their LAR (if applicable), develop a treatment plan for the individual that includes a list of the type(s) of mental health community services authorized in accordance with subparagraph (A) of this paragraph.

(2) Crisis services. For crisis services, as described in §412.321 of this title (relating to Crisis Services), a provider must deliver services in accordance with the utilization management guidelines and authorization of services and timeframes described in §412.318(c) of this title (relating to Utilization Management). A diagnosis is not required when services are delivered in crisis situations.

(e) Content and timeframe of treatment plan. Each provider must develop a written treatment plan, in consultation with the individual and their LAR (if applicable), within 10 business days after the date of receipt of notification from the department or its designee that the individual is eligible and has been authorized for routine care services.

(1) At minimum, a staff member credentialed as a QMHP-CS is responsible for completing and signing the treatment plan. The treatment plan must reflect input from each of the disciplines of treatment to be provided to the individual based upon the assessment. The treatment plan must include:

(A) a description of the presenting problem;

(B) a description of the individual's strengths;

(C) a description of the individual's needs arising from the mental illness or serious emotional disturbance;

(D) a description of the individual's co-occurring substance use or physical health disorder, if any;

(E) a description of the recovery goals and objectives based upon the assessment, and expected outcomes of the treatment in accordance with paragraph (2) of this subsection;

(F) the expected date by which the recovery goals will be achieved;

(G) a list of resources for recovery supports, (e.g., community volunteer opportunities, family or peer organizations, 12-step programs, churches, colleges, or community education); and

(H) a list of the type(s) of services within each discipline of treatment that will be provided to the individual (e.g., psychosocial rehabilitation, medication services, substance abuse treatment, supported employment), and for each type of service listed, provide:

(i) a description of the strategies to be implemented by staff members in providing the service and achieving goals;

(ii) the frequency (e.g., weekly, twice a month, monthly), number of units (e.g., 10 counseling sessions, two skills training sessions), and duration of each service to be provided (e.g., .5 hour, 1.5 hours); and

(iii) the credentials of the staff member responsible for providing the service.

(2) The goals and objectives with expected outcomes required by paragraph (1)(E) of this subsection must:

(A) specifically address the individual's unique needs, preferences, experiences, and cultural background;

(B) specifically address the individual's co-occurring substance use or physical health disorder, if any;

(C) be expressed in terms of overt, observable actions of the individual;

(D) be objective and measurable using quantifiable criteria; and

(E) reflect the individual's self-direction, autonomy, and desired outcomes.

(3) The individual and LAR (if applicable) must be provided a copy of the treatment plan and each subsequent treatment plan reviewed and revised.

(f) Review of treatment plan.

(1) Each provider must:

(A) review the individual's treatment plan prior to requesting an authorization for the continuation of services:

(B) review the treatment plan in its entirety, as permitted under confidentiality laws by considering input from the individual, the individual's LAR (if applicable), and each of the disciplines of treatment;

(C) determine if the plan is adequately addressing the needs of the individual; and

(D) document progress on all goals and objectives and any recommendation for continuing services, any change from current services, and any discharge from services.

(2) In addition to the required review under paragraph (1) of this subsection, a provider may review the treatment plan in the following instances:

(A) if clinically indicated; and

(B) at the request of the individual or the LAR (if applicable), or the primary caregiver of a child or adolescent.

(3) Any time the treatment plan is reviewed, the provider must:

(A) meet with the individual either face to face or via telemedicine to solicit and consider input from the individual regarding a self-assessment of progress toward the recovery goals, as described in subsection (e)(1)(E) of this section;

(B) solicit and consider the input from each of the disciplines of treatment in assessing the individual's progress toward the recovery goals and objectives with expected outcomes, described in subsection (e)(1)(E) of this section;

(C) solicit and consider input from the LAR (if applicable) or primary caregiver, if the individual is a child or adolescent regarding the level of satisfaction with the services provided; and

(D) document all the input described in subparagraphs (A) - (C) of this paragraph.

(g) Revisions to the treatment plan. If, after any review of the treatment plan, the provider determines it does not adequately address

the needs of the individual, the provider must appropriately revise the content of the plan.

(h) Discharge Summary. Not later than 21 calendar days after an individual's discharge, whether planned or unplanned, the provider must document in the individual's medical record:

(1) a summary, based upon input from all the disciplines of treatment involved in the individual's treatment plan, of all the services provided, the individual's response to treatment, and any other relevant information;

(2) recommendations made to the individual or their LAR (if applicable) for follow up services, if any; and

(3) the individual's last diagnosis, based upon all five axes of the current DSM.

§412.323. Medication Services.

(a) Prescribing of psychoactive medication. The LMHA and MCO must ensure that psychoactive medication is prescribed in accordance with Chapter 415, Subchapter A of this title (relating to Prescribing of Psychoactive Medication).

(b) Medication service delivery. The LMHA, MCO, and provider must implement written procedures to ensure safe medication-related service delivery that include, but are not limited to, the following.

(1) A procedure for physician delegation of medical acts to non-physicians. The procedure must address delegation protocols to advanced practice nurses and/or physician assistants, delegation of medical acts to nursing and/or unlicensed staff, and the frequency of physician supervision over the staff member to whom a delegation is made. The procedure must provide a method to ensure the staff members are acting within the scope of their license and is qualified and trained to perform the medical act.

(2) A procedure for RNs to make assignments to LVNs or delegate to unlicensed staff members nursing acts for the care of stable individuals with common, well-defined health problems with predictable outcomes. The procedure must address the types of nursing acts that may be delegated, the method to ensure the staff member is trained and qualified to perform a delegated nursing act, and the frequency of nursing supervision of the unlicensed staff member in accordance with Texas Occupations Code, Chapter 301 (relating to the Nursing Practice Act).

(3) A procedure for medication administration by licensed medical or nursing staff that addresses who may access and administer medications, timely administration, documentation of administration, and monitoring of administration, and that complies with applicable professional licensing standards and rules.

(4) A procedure for medication handling that addresses:

(A) dispensing;

(B) labeling and record keeping of sample medications;

(C) limiting access to physician stock medications;

(D) patient assistance/indigent medication program;

(E) mechanisms to ensure safe temperature-controlled storage and transport of medication;

(F) controlled drugs;

(G) disposal/destruction of medication; and

(H) locked areas and maintaining security.

(5) A procedure by which a physician, a physician's assistant, or an RN assesses and determines whether an individual can self-administer medication and whether it can be done without supervision.

(6) A procedure for training and assessing the competency of staff members to perform supervision of self-administration of medication, including:

(A) medication actions;

(B) target symptoms;

(C) understanding prescription labels;

(D) potential toxicity;

(E) side effects;

(F) adverse reactions;

(G) proper storage of medications; and

(H) reporting and documentation requirements.

(7) A procedure for providing appropriate supervision of staff members who are supervising self-administration of medication.

(8) A procedure for medication errors that defines the most common types of medication errors and provides for:

(A) the accurate documentation of medication errors;

(B) the reporting of medication errors to the physician within one hour of their occurrence;

(C) a mechanism for determining medication error trends;

(D) a mechanism for analyzing both individual medication errors and trends for quality improvement; and

(E) the reporting of medication errors, as appropriate.

§412.324. Additional Standards of Care Specific to Mental Health Community Services for Children and Adolescents.

(a) Administration of the uniform assessment. The uniform assessment must be administered face-to-face or via telemedicine with the individual and the LAR (if applicable) or primary caregiver as clinically appropriate according to the child's or adolescent's age, functioning, and current living situation.

(b) Age and developmentally appropriate mental health community services. All mental health community services delivered to children and adolescents by a provider must be, for each child and adolescent, age-appropriate, developmentally appropriate, and consistent with academic development.

(c) Separation of individuals by age. A provider that delivers mental health community services to children and adolescents in group settings (e.g., residential, day programs, group therapy, partial hospitalization, and inpatient) must separate children and adolescents from adults. The provider must further separate children from adolescents according to age and developmental needs, unless there is a clinical or developmental justification in the medical record.

(d) Transition to mental health community services for adults. The provider must develop a transition plan for each adolescent who will need mental health community services for adults. The transition plan must be developed in consultation with the adolescent (and LAR if applicable) and future providers with adequate time to allow both current and future providers to transition the adolescent into adult services without a disruption in services. The transition plan must include:

(1) a summary of the mental health community services and treatment the adolescent received as a child and adolescent;

(2) the adolescent's current status (e.g., diagnosis, medications, uniform assessment guideline calculation, and unmet needs);

(3) information from the adolescent and the LAR regarding the adolescent's strengths, preferences for mental health community services, and responsiveness to past interventions;

(4) a description of the mental health community services the adolescent will receive as an adult;

(5) a list of resources for other recovery supports such as volunteer opportunities, family or peer organizations, 12-step programs, churches, colleges, or community education;

(6) documentation that the adolescent's services continued throughout the transition without disruptions; and

(7) documentation of the follow up to ensure successful transition to adult services.

§412.325. Telemedicine Services.

The LMHA, MCO, and provider must ensure that if a provider uses telemedicine, it is implemented in accordance with written procedures and using a protocol approved by the LMHA's or MCO's medical director. Procedures regarding the provision of telemedicine service must include the following requirements:

(1) clinical oversight by the LMHA's or MCO's medical director or designated physician responsible for medical leadership;

(2) contraindications for telemedicine use;

(3) qualified people to ensure the safety of the individual being served by telemedicine at the remote site; and

(4) use by credentialed or licensed providers who provide clinical care within the scope of their credential or license.

§412.326. Documentation of Service Provision.

(a) Progress note content. Except for crisis services as described in §412.321 of this title (relating to Crisis Services) and day programs for acute needs as described in Chapter 419, Subchapter L of this title (relating to Mental Health Rehabilitative Services), and case management services as described in Chapter 412, Subchapter I of this title (relating to Mental Health Case Management Services), a provider must document the provision of all other mental health community services, each service encounter and include at least the following:

(1) the name of the individual to whom the service was provided, including the LAR or primary caregiver, if applicable;

(2) the type of service provided;

(3) the date the service was provided;

(4) the begin and end time of the service;

(5) the location where the service was provided;

(6) a summary of the activities that occurred;

(7) the modality of the service provision (e.g., individual, group);

(8) the method of service provision (e.g., face-to-face, phone, telemedicine);

(9) the training methods used, if applicable (e.g., instructions, modeling, role play, feedback, repetition);

(10) the title of the curriculum being used, if applicable;

(11) the treatment plan objective(s) that was the focus of the service;

(12) the progress or lack of progress in achieving treatment plan goals;

(13) the signature of the staff member providing the service and a notation as to whether the staff member is an LPHA, a QMHP-CS, a pharmacist, a CSSP, an LVN, a peer provider or otherwise credentialed, as required for that service; and

(14) any pertinent event or behavior relating to the individual's treatment which occurs during the provision of the service.

(b) Frequency of documentation. The documentation required in subsection (a) of this section must be made within two business days after each contact that occurs to provide mental health community services.

(c) Retention. Documentation must be retained in compliance with applicable federal and state laws, rules, and regulations.

§412.327. Supervision.

(a) Clinical supervision. Clinical supervision must be accomplished by an LPHA or a QMHP-CS as follows:

(1) by conducting a documented meeting with the staff member being supervised at least monthly; and

(2) for peer providers, by conducting an additional monthly documented observation of the peer provider providing mental health community services.

(b) Policies and procedures. The LMHA or MCO will develop and implement written policies and procedures for supervision of all applicable levels of staff members providing services to individuals.

(c) Licensed staff member supervision. All licensed staff members must be supervised in accordance with their practice act and applicable rules.

(d) QMHP-CS supervision. A QMHP-CS's designated clinical duties must be clinically supervised by:

(1) a QMHP-CS; or

(2) an LPHA if the QMHP-CS is clinically supervising the provision of mental health community services.

(e) CSSP supervision. A CSSP's designated clinical duties must be clinically supervised by a QMHP-CS. The CSSP must have access to clinical consultation with an LPHA when necessary.

(f) Family partner supervision. A family partner is supervised by the mental health children's director, clinic director, case management supervisor, or wraparound supervisor.

(g) Peer provider supervision. A peer provider's designated clinical duties must be clinically supervised by an LPHA.

(h) Peer review. The LMHA, MCO, and provider must implement a peer review process for licensed staff members that:

(1) promotes sound clinical practice;

(2) promotes professional growth; and

(3) complies with applicable state laws (e.g., Medical Practice Act, Nursing Practice Act, Vocational Nurse Act) and rules.

(i) Documentation. All clinical supervision must be documented.

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

Filed with the Office of the Secretary of State on January 22, 2009.

TRD-200900282
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: March 8, 2009
For further information, please call: (512) 458-7111 x6972

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§746.1017, 746.1601, and 746.1609, concerning child-care center director qualifications and classroom ratios and group sizes, in its Minimum Standards for Child-Care Centers. The purpose of the amendments is to clarify rule language and ensure consistency with regulations. The purpose of the amendment to §746.1017 is to replace the current graphic with an amended version, which is needed as a result of a technical oversight. The amendments to §746.1601 and §746.1609 clarify that children up through age 13 years may be cared for in licensed child-care centers, as outlined in the Human Resources Code, §42.001.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that child-care facilities will have a clearer understanding that children through the age of 13 years may be in care and of the rules related to director qualifications. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

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

Questions about the content of the proposal may be directed to Lee Roberts at (512) 438-3246 in DFPS's Licensing Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-391, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

SUBCHAPTER D. PERSONNEL
DIVISION 1. CHILD-CARE CENTER DIRECTOR

40 TAC §746.1017

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§746.1017. What qualifications must the director of my child-care center licensed for 12 or fewer children meet?

(a) Except as otherwise provided in this division, the director of a child-care center licensed for 12 or fewer children must be at least 21 years old, have a high school diploma or its equivalent, and meet one of the following combinations of education and experience, as defined in §746.1021 of this title (relating to What constitutes experience in a licensed child-care center, or in a licensed or registered child-care home?):

Figure: 40 TAC §746.1017(a)

(b) (No change.)

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

Filed with the Office of the Secretary of State on January 21, 2009.

TRD-200900260
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: March 8, 2009
For further information, please call: (512) 438-3437

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SUBCHAPTER E. CHILD/CAREGIVER RATIOS AND GROUP SIZES
DIVISION 2. CLASSROOM RATIOS AND GROUP SIZES FOR CENTERS LICENSED TO CARE FOR 13 OR MORE CHILDREN

40 TAC §746.1601, §746.1609

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of

services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§746.1601. How many children may one caregiver supervise?
The classroom ratio is the number of children one caregiver may supervise and is shown in the following chart. The classroom ratio is based on the specified age of the children in the group, unless otherwise stated in this subchapter:
Figure: 40 TAC §746.1601

§746.1609. What is the maximum group size?
The maximum group size and the number of children two or more caregivers may supervise when 13 or more children are in care is specified in the following chart and is based on the specified age of the children in the group:
Figure: 40 TAC §746.1609

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

Filed with the Office of the Secretary of State on January 21, 2009.

TRD-200900261
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: March 8, 2009
For further information, please call: (512) 438-3437

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the 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 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 33. LICENSING

SUBCHAPTER A. APPLICATION PROCEDURES

16 TAC §33.13

The Texas Alcoholic Beverage Commission (commission) adopts new §33.13, relating to the processing of applications for beer licenses, wine and beer retailer's permits, and wine and beer retailer's off-premises permits, without changes to the proposed text as published in the November 14, 2008, issue of the *Texas Register* (33 TexReg 9168).

The new rule requires applications for the listed licenses and permits to be presented to the commission for processing prior to filing the applications with the county judge for a hearing under §61.31 of the Alcoholic Beverage Code (code).

Under §61.31 of the code, the county judge is often required to make a licensing determination based only on the content of an application and prior to a complete development and investigation of the facts relevant to the decision to grant or deny the application. This can result in the commission refusing or rejecting the application back to the county judge under §61.34 of the code to consider the facts as they have been developed by the commission or other interested persons. This creates unnecessary expense, delay, and duplication of effort. The new rule avoids this by requiring processing and investigation of the application by the commission prior to filing the application with the county judge under §61.31. Under the new rule the judge will make the decision to grant or deny an application with all interested persons and all information before him at the initial hearing, obviating the need for any subsequent hearing.

No comments were received as a result of publication of the proposed rule.

The new rule is adopted under the authority of §5.31 of the Alcoholic Beverage Code (code), which provides the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out the provisions of the code.

Cross Reference: Section 5.31 and §61.31 of the Alcoholic Beverage Code will be affected by the new rule.

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

Filed with the Office of the Secretary of State on January 21, 2009.

TRD-200900272
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Effective date: February 10, 2009
Proposal publication date: November 14, 2008
For further information, please call: (512) 206-3204

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SUBCHAPTER B. LICENSE AND PERMIT SURCHARGES

The Texas Alcoholic Beverage Commission (commission) adopts an amendment to §33.23, relating to the surcharges assessed for permits and licenses issued by the commission without changes to the proposed text as published in the November 7, 2008, issue of the *Texas Register* (33 TexReg 9040). The commission also adopts amendments to §33.25 relating to the implementation of two-year licenses and permits issued by the commission with a change to the proposed text as published in the November 7, 2008, issue of the *Texas Register* (33 TexReg 9040).

The amendment to §33.23 deletes surcharges for out-of-state wine only package store permits. The surcharge for this permit is the same as the in-state wine only package store permit, so the separate permit type for out-of-state is deleted as unnecessary.

The amendments to §33.25 also delete the out-of-state wine only package store permits from this section that relates to the implementation of two-year permits. In addition, the rule is amended to delete Forwarding Center Authority permits from subsection (d) of the rule, which is the list of permit types that will be issued two-year permits beginning on January 1, 2009, and adds the permit to subsection (e), which is the list of permit and license types that will be issued two-year permits beginning on September 1, 2009.

An amendment is made to subsection (c) to correct the chapter number of the Texas Alcoholic Beverage Code under which the Agent's Beer License (BK) can be found.

No comments were received as a result of the proposed amendments to the two sections.

16 TAC §33.23

The amendment to §33.23 is authorized by §5.50 of the Texas Alcoholic Beverage Code (code), which provides the commission with authority to establish and assess surcharges by rule. The amendments to §33.25 are authorized by §§5.50, 11.09, and

61.03, of the code, which provide the commission with authority to issue a license or permit for a two-year term, and §35.6 of the commission rules, relating to Regional Forwarding Centers for Manufacturers.

Cross Reference: Sections 5.31, 5.50, 11.09, and 61.03 of the Texas Alcoholic Beverage Code and §35.6 of the commission rules are affected by the amendments.

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

Filed with the Office of the Secretary of State on January 23, 2009.

TRD-200900292
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Effective date: February 12, 2009
Proposal publication date: November 7, 2008
For further information, please call: (512) 206-3204

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16 TAC §33.25

The amendment to §33.23 is authorized by §5.50 of the Texas Alcoholic Beverage Code (code), which provides the commission with authority to establish and assess surcharges by rule. The amendments to §33.25 are authorized by §§5.50, 11.09, and 61.03, of the code, which provide the commission with authority to issue a license or permit for a two-year term, and §35.6 of the commission rules, relating to Regional Forwarding Centers for Manufacturers.

Cross Reference: Sections 5.31, 5.50, 11.09, and 61.03 of the Texas Alcoholic Beverage Code and §35.6 of the commission rules are affected by the amendments.

§33.25. Alcoholic Beverage License and Permit Fees and Surcharges.

(a) This rule implements the provisions of §§5.50, 11.09 and 61.03 of the Texas Alcoholic Beverage Code (Code). Section 5.50 authorizes the Texas Alcoholic Beverage Commission (commission) by rule to assess surcharges on all applicants for original or renewal certificate, permit, or license issued by the commission. Sections 11.09 and 61.03 of the Code authorize the commission to issue a license or permit for a two-year term and double the amount of the fees established for each license or permit by the Code or a rule of the commission, and surcharges established in §33.23 of this chapter (relating to Alcoholic Beverage License and Permit Surcharges).

(b) Implementation Plan. To maintain a reasonable annual distribution of renewal application review work and permit fees, the commission will implement the two-year licensing schedule based on the type of permit or license type for which an application is submitted.

(c) An original or renewal application for a permit or license listed in the following chart, with an issue date before October 1, 2008, will expire one year from the date the license or permit is issued. An original or renewal application for a permit or license listed in the following chart, with an issue date on or after October 1, 2008, will expire two years from the date the license or permit is issued.
Figure: 16 TAC §33.25(c)

(d) An original or renewal application for a primary permit or license listed in the following chart, with an issue date before January 1, 2009, will expire one year from the date the license or permit is issued. An original or renewal application for a primary permit or license listed in the following chart, with an issue date on or after January 1, 2009, will expire two years from the date the license or permit is issued.
Figure: 16 TAC §33.25(d)

(e) An original or renewal application for a primary permit or license listed in the following chart, with an issue date before September 1, 2009, will expire one year from the date the license or permit is issued. An original or renewal application for a primary permit or license listed in the following chart, with an issue date on or after September 1, 2009, will expire two years from the date the license or permit is issued.
Figure: 16 TAC §33.25(e)

(f) The following permits and licenses are time limited and the fees and surcharges are assessed each time a permit or license is issued.
Figure: 16 TAC §33.25(f) (No change.)

(g) A secondary permit or license which requires the holder to first obtain another permit, including a late hours permit, expires on the same date as the primary permit expires. A temporary permit or license expires on the date indicated on the license or permit or the same date as the primary permit, whichever occurs earlier. The fees for a secondary or temporary permit or license may not be prorated or refunded.

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

Filed with the Office of the Secretary of State on January 23, 2009.

TRD-200900293
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Effective date: February 12, 2009
Proposal publication date: November 7, 2008
For further information, please call: (512) 206-3204

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PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES

SUBCHAPTER A. ADMINISTRATION

16 TAC §402.103

The Texas Lottery Commission (Commission) adopts the repeal of 16 TAC §402.103 (relating to Training Program), without changes to the proposal as published in the November 14, 2008, issue of the *Texas Register* (33 TexReg 9169).

The Commission is adopting the repeal of the existing rule §402.103 concurrently with the adoption of a new rule at §402.103. The purpose of the new rule is to provide the opportunity for members of licensed authorized organizations to complete training required in Texas Occupations Code §2001.107 by utilizing the internet.

A public comment hearing was held on December 4, 2008. A representative from the Bingo Interest Group commented at the hearing in support of the proposed repeal. No written comments were received during the public comment period.

The repeal is adopted under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

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

Filed with the Office of the Secretary of State on January 21, 2009.

TRD-200900245
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: February 10, 2009
Proposal publication date: November 14, 2008
For further information, please call: (512) 344-5012

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16 TAC §402.103

The Texas Lottery Commission (Commission) adopts new 16 TAC §402.103 (relating to Training Program), with changes to the proposed text as published in the November 14, 2008, issue of the *Texas Register* (33 TexReg 9170).

The purpose of the new rule is to provide the opportunity for members of licensed authorized organizations to complete training required in Texas Occupations Code §2001.107 by utilizing the internet.

A public comment hearing was held on December 4, 2008. A representative from the Bingo Interest Group commented at the hearing in overall support of the proposed new rule. No written comments were received during the public comment period.

Comment: Subsection (f) should be clarified if the Commission's interpretation of the statutes is that all people designated as operators must complete training. As proposed, it could be implied that if an organization has one operator trained, it has met the requirement. The Commission might say "all operators designated" or "each operator designated."

Agency Response: The Commission agrees and has substituted "each" for "any" in subsection (f).

Comment: As soon as this rule, §402.103 would be adopted by the Commission and become effective, not all people designated as bingo chairpersons would have the certificate of completion. The Commission should put some sort of a time period in the rule to allow opportunity for compliance. Otherwise, many people will be in immediate violation of the rule.

Agency Response: The Commission agrees and has added language to subsection (f) that provides 60 days from the effective date of the new rule for organizations to comply with the training requirements.

Comment: At subsection (f), change "and" to "or", or allow the bingo chairperson to designate another person to take the course who is not an operator.

Agency Response: The Commission disagrees. It is important that the bingo chairperson complete training to be adequately equipped to fulfill the position's responsibilities.

The new rule is adopted under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

§402.103. Training Program.

(a) Definitions.

(1) On-line training class--A training class developed by the Commission that is accessible on the Commission's website and may be taken at any time.

(2) On-site training class--A training class conducted by a Commission employee held at a specified date, time, and location.

(b) Training classes. The training program is offered in two formats. Individuals may choose an on-site or on-line training class.

(c) On-site training class.

(1) Notice of the specified date, time and location of scheduled on-site training classes will be posted on the Commission's website and published in the Bingo Bulletin.

(2) A person attending an on-site training class should pre-register by:

(A) completing an electronic submission form prescribed by the Commission located on the Commission's website; or

(B) telephoning the Commission's headquarters location and providing the information requested on the electronic submission form prescribed by the Commission.

(3) Each individual attending the training program must complete a confirmation of attendance on a form prescribed by the Commission.

(4) All reasonable and necessary expenses or costs of attendance by any member of the licensed authorized organization may be paid from the licensed authorized organization's bingo bank account. Expenses and costs are limited to travel, lodging, meals, and materials.

(5) In the event the Charitable Bingo Operations Division cancels the on-site training, reasonable effort will be made to notify persons who have pre-registered.

(d) On-line training class.

(1) Persons taking the on-line training class must:

(A) complete all training modules specified on the Commission's website; and

(B) complete a test answer sheet and receive a passing score of at least 70%.

(2) Persons not receiving a passing score on the test answer sheet may re-take the training class.

(e) The Charitable Bingo Operations Division will issue a Certificate of Completion that is valid for two years to persons who attend the entire on-site training class or satisfactorily complete the on-line training.

(f) Training Required.

(1) At all times, the bingo chairperson and each operator designated by a licensed authorized organization holding a regular license to conduct bingo must have a valid Certificate of Completion for the training program.

(2) The bingo chairperson and at least one other person designated as an operator under Occupations Code, §2001.102(b)(10) must have a valid Certificate of Completion prior to the date a regular license is issued or a license amendment to change the primary operator is approved.

(3) Organizations must meet the requirements of paragraphs (1) and (2) of this subsection within 60 days of the effective date of this section.

(4) Other officers, directors or members from a licensed authorized organization may attend training.

(5) The Charitable Bingo Operations Division may limit the number of persons attending an on-site class for a licensed authorized organization in order to ensure persons from other licensed authorized organizations have the opportunity to attend training.

(g) Content of the training. The training program will cover, at a minimum, the following areas:

(1) General information about the Bingo Enabling Act and Charitable Bingo Administrative Rules;

(2) Conducting a bingo game;

(3) Record keeping requirements;

(4) Administration and operation of charitable bingo;

(5) Promotion of a bingo game;

(6) Bingo Advisory Committee; and

(7) General information about the license application process.

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

Filed with the Office of the Secretary of State on January 21, 2009.

TRD-200900246
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: February 10, 2009
Proposal publication date: November 14, 2008
For further information, please call: (512) 344-5012

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SUBCHAPTER D. LICENSING REQUIREMENTS

16 TAC §§402.406, 402.410, 402.422

The Texas Lottery Commission (Commission) adopts new 16 TAC §402.406 (relating to Bingo Chairperson), without changes to the proposed text as published in the November 14, 2008, issue of the *Texas Register* (33 TexReg 9171). The Commission also adopts new §402.410 (relating to Amendment of a License - General Provisions) and new §402.422 (relating to Amendment to a Regular License to Conduct Charitable Bingo), with changes to the proposed text as published in the November 14, 2008, issue of the *Texas Register* (33 TexReg 9171). An incorrect reference in proposed §402.422(f) has been changed from (c)(2) to (c)(1)(B).

The purpose of new §402.406 is for licensed authorized organizations to designate a member of their organization who is an officer or director as described in the organization's by-laws who will be responsible for overseeing the organization's bingo activities and reporting to the membership relating to those activities as the bingo chairperson.

The purpose of new §402.410 is to specify when an amendment to a license is needed and to set out the requirements that are applicable to all license amendments.

The purpose of new §402.422 is to specify when an amendment to a license to conduct bingo is needed and to set out the requirements that are applicable to the specific change being requested.

A public comment hearing was held on December 4, 2008. A representative from the Bingo Interest Group commented at the hearing in support of new §402.406, and commented generally in favor of new §402.410. The representative made no comments on new §402.422. No written comments on the new rules were received during the public comment period.

Comment: In §402.410(e), there is a concern that language requesting things like minutes and so forth is very broad in that you could request meeting minutes or other documentation for anything. The suggestion is that the Commission limits the request for additional proof to some category of major changes to the license.

Agency Response: The Commission agrees and has removed subsection (e) from §402.410. Signature Requirements are addressed in proposed 16 TAC §402.412.

The new rules are adopted under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The adopted new rules implement Texas Occupations Code, Chapter 2001.

§402.410. Amendment of a License - General Provisions.

(a) The Commission will not approve a license amendment application with an effective date that is not within the licensed authorized organization's or commercial lessor's current license period.

(b) A licensee may amend a license renewal application prior to its approval.

(c) The term "effective date", when used in this section, means the first day that the amended changes are to begin.

(d) A licensee may not begin activities under the amended license until the following have occurred:

(1) the effective date; and

(2) licensee's receipt and display at the playing location of official written notification or the amended license authorizing the change.

§402.422. Amendment to a Regular License to Conduct Charitable Bingo.

(a) A licensed authorized organization must file a form prescribed by the Commission and submit a $10 fee to amend its licensed:

(1) playing days;

(2) playing times;

(3) playing location;

(4) bingo chairperson;

(5) organization name; or

(6) primary business office.

(b) Playing days or playing times.

(1) An organization amending its playing day(s) or playing time(s) must specify on the form each playing occasion day and time that the organization intends to conduct bingo at the location.

(2) The playing day(s) or time(s) specified on the form may not:

(A) conflict with the playing day(s) or time(s) of any other application or license issued for that location;

(B) exceed the maximum number of bingo occasions per day allowed under Texas Occupations Code, §2001.419(c) and (d); or

(C) exceed three occasions during a calendar week or four hours per occasion.

(c) Playing location.

(1) An organization amending its playing location must submit:

(A) its current bingo license unless the license is currently in administrative hold status or its renewal application is pending; and

(B) a copy of the meeting minutes recording that the organization voted to move the bingo playing location and indicating the exact playing location address and name of the location, if applicable.

(2) A licensee shall display a copy of its license at the current playing location if the license was surrendered upon application for an amendment.

(d) Organization name. An organization amending its organization name must submit a copy of the following:

(1) all amended organizing instruments reflecting the name change;

(2) written notice sent to the Internal Revenue Service updating the organization's record if the organization is required to maintain a 501(c) exemption;

(3) meeting minutes recording that the organization voted to change its name; and

(4) letter approving the name change from the parent organization, if applicable.

(e) Primary business office location.

(1) An organization may not relocate its primary business office to a different county solely for the purpose of relocating its bingo playing location. If the new location is not adjacent to the current county of its primary business office, the organization must have at least 20 percent of its members' residences located in the county to which the organization is moving.

(2) An organization changing its primary business office location must submit a copy of the following:

(A) meeting minutes recording that the licensed authorized organization voted to move its primary business office to the proposed location and the reason for the move;

(B) the licensed authorized organization's membership list showing names and county of residence with at least 20 percent of the members' residences located in the county to which the organization is moving; and

(C) letter approving the organization's primary business office relocation to another county from the parent organization, if applicable.

(f) Meeting minutes submitted in accordance with subsections (c)(1)(B), (d)(3), and (e)(2)(A) of this section must be signed and certified as true and correct by an officer of the organization.

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

Filed with the Office of the Secretary of State on January 21, 2009.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: February 10, 2009
Proposal publication date: November 14, 2008
For further information, please call: (512) 344-5012

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SUBCHAPTER F. PAYMENT OF TAXES, PRIZE FEES AND BONDS

16 TAC §402.604

The Texas Lottery Commission (Commission) adopts new 16 TAC §402.604 (Delinquent Purchaser), with changes to the proposed text as published in the November 14, 2008, issue of the *Texas Register* (33 TexReg 9173).

The purpose of the new rule is to clearly set forth for licensees the process and timelines to follow related to late payments for bingo sales and equipment. This rule provides clarification of §2001.216 of the Bingo Enabling Act, Chapter 2001, Texas Occupations Code.

A public comment hearing was held on December 4, 2008. A representative from the Bingo Interest Group commented at the hearing in overall favor of the proposed new rule with two exceptions. No written comments were received during the public comment period.

Comment: The commenter is opposed to subsection (b) as proposed. It seems unfair to consider all units managed by a unit manager to be delinquent because one of the units is delinquent.

Agency Response: The Commission agrees and has deleted the language in proposed subsection (b).

Comment: Subsection (a) may require modification because there are frequently discrepancies between the product that is actually received from a distributor and what the invoice or bill says. We request the agency take note that there is often a dispute about what is billed and what is actually received.

Agency Response: The Commission agrees and has added language to the definition of a delinquent purchaser in subsection (a) to clarify that a purchaser is delinquent who has not timely paid or notified the Commission and the manufacturer or distributor of a dispute.

The new rule is adopted under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

§402.604. Delinquent Purchaser.

(a) A delinquent purchaser is a licensed authorized organization, unit, or distributor that has not:

(1) provided full payment to a licensed distributor or manufacturer for equipment or supplies, or within 30 calendar days of:

(A) the actual delivery; or

(B) invoice for leased bingo equipment; or

(2) notified the Commission and the distributor or manufacturer that it disputes the invoice.

(b) Notification of Delinquency and Payment. A manufacturer or distributor must notify the Commission on a prescribed form of all delinquent purchasers by the 37th calendar day after the actual delivery of equipment or supplies.

(c) A manufacturer or distributor must notify the Commission on a prescribed form of a payment received from a delinquent purchaser within seven calendar days after receipt of the payment.

(d) A manufacturer or distributor who has terminated its license should report all payments made by delinquent purchasers for the six months immediately following the license termination.

(e) Delinquent Purchaser List. The Commission will maintain a Delinquent Purchaser List on the Commission's website and provide a copy of the list upon written request.

(f) Before the sale of any equipment or supplies, a manufacturer or distributor must confirm whether the intended purchaser is on the Delinquent Purchaser List. Any licensee or unit on the Delinquent Purchaser List must provide immediate payment upon delivery of the equipment or supplies.

(g) The Commission will remove a delinquent purchaser from the Delinquent Purchaser List twenty calendar days after its license termination date if the manufacturer or distributor who is owed a liability is no longer licensed and does not have a pending application for a new license.

(h) A delinquent purchaser that is a licensed authorized organization or distributor will remain on the Delinquent Purchaser List for twenty calendar days past the date of its license termination unless the Commission receives notice that the delinquency has been paid or the organization or distributor has a pending application for a new license at that time.

(i) A delinquent purchaser unit that dissolves will remain on the Delinquent Purchaser List for twenty calendar days past the date of dissolution unless the Commission receives notice that the delinquency has been paid. Members of a unit that was a delinquent purchaser will remain on the Delinquent Purchaser List until the liability is paid.

(j) A manufacturer or distributor may request that the Commission add a delinquent purchaser to the Delinquent Purchaser List that has been removed because its license was terminated if the delinquent purchaser is re-licensed and the liability has not been paid.

(k) Unit Accounting. If a delinquent purchaser joins a unit, the unit will be placed on the Delinquent Purchaser List until the delinquent purchaser's liability is paid, the delinquent purchaser withdraws from the unit, or the unit dissolves.

(l) A licensed authorized organization that was a delinquent purchaser when joining a unit will remain a delinquent purchaser after leaving a unit unless the liability is paid.

(m) If a licensed authorized organization withdraws from a unit that is a delinquent purchaser, both the unit and the withdrawing organization will remain a delinquent purchaser until the liability is paid.

(n) If a unit that is a delinquent purchaser because of a liability the unit incurred dissolves, all unit members at the time of dissolution will remain delinquent purchasers until the liability is paid.

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

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER G. WORKERS' COMPENSATION INSURANCE

DIVISION 2. GROUP SELF-INSURANCE COVERAGE

28 TAC §§5.6401, 5.6402, 5.6404, 5.6409

The Commissioner of Insurance adopts the repeal of §§5.6401, 5.6402, 5.6404, and 5.6409, concerning group self-insurance coverage. The repeal is adopted without changes to the proposal as published in the July 25, 2008, issue of the *Texas Register* (33 TexReg 5835).

REASONED JUSTIFICATION. This repeal is necessary because the Department is adopting new sections that better define and reflect the purpose and scope of this division; more clearly and appropriately define the terms to be used

in the division; more clearly define a workers' compensation self-insurance group's (group) responsibilities for notifying the Department of certain specified changes in circumstances; more clearly prescribe a group's responsibility for continuing compliance with the requirements of the Labor Code and this division; and better define the requirements related to the storage and maintenance of a group's books and records, including allowing a group to locate its books and records outside of the State of Texas. These adopted new sections are also published in this issue of the *Texas Register.*

HOW THE SECTIONS WILL FUNCTION. The adoption of the repeal will result in the elimination of obsolete requirements from the Texas Administrative Code.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. The Department did not receive any comments on the proposed repeal.

STATUTORY AUTHORITY. The repeal of §§5.6401, 5.6402, 5.6404, and 5.6409 is adopted pursuant to the Labor Code §§407A.001, 407A.002, 407A.005, 407A.008, 407A.009, 407A.051, 407A.052, 407A.355, and the Insurance Code §36.001. The Labor Code §407A.001 provides the definitions for the Labor Code Chapter 407A. The Labor Code §407A.002 provides that an unincorporated association or business trust composed of five or more private employers may establish a workers' compensation self-insurance group under the Labor Code Chapter 407A, provided certain stated conditions are met. The Labor Code §407A.005 requires an association of employers to hold a certificate of approval issued under the Labor Code Chapter 407A in order to act as a workers' compensation self-insurance group. The Labor Code §407A.008 provides that the Commissioner shall adopt rules as necessary to implement the Labor Code Chapter 407A. The Labor Code §407A.009 requires an administrator or service company under the Labor Code Chapter 407A that performs the acts of an administrator as defined in the Insurance Code Chapter 4151 to hold a certificate of authority under the Insurance Code Chapter 4151. The Labor Code §407A.051(a) requires an association of employers that proposes to organize as a workers' compensation self-insurance group to file an application for a certificate of approval with the Department. Additionally, the Labor Code §407A.051(b) and (c) enumerates the particular items that must be included in an applicant's application for a certificate of approval. The Labor Code §407A.051(d) requires a group to notify the Commissioner of any change in the information required to be filed under the Labor Code §407A.051(c) or the manner of a group's compliance with the Labor Code §407A.051(c). Finally, the Labor Code §407A.051(e) specifically requires the Commissioner to evaluate the financial information provided with the application as necessary to ensure that the funding is sufficient to cover expected losses and expenses and that the funds necessary to pay workers' compensation benefits will be available on a timely basis. The Labor Code §407A.052 requires the Commissioner to issue a certificate of approval to a proposed group on finding that the group has met the requirements of the Labor Code Chapter 407A Subchapter B. The Labor Code §407A.355 defines insolvent. Additionally, this section also provides that if the Commissioner determines that the group is in a hazardous financial condition, the Commissioner may take action as provided by the Insurance Code Article 21.28-A. The Insurance Code §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.

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

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General Counsel and Chief Clerk
Texas Department of Insurance
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28 TAC §§5.6401 - 5.6405, 5.6408, 5.6409, 5.6411 - 5.6413

The Commissioner of Insurance adopts amendments to §§5.6403, 5.6405, 5.6408, and 5.6411 and new §§5.6401, 5.6402, 5.6404, 5.6409, 5.6412, and 5.6413, concerning workers' compensation group self-insurance coverage. Sections 5.6403, 5.6408, 5.6411, and 5.6412 are adopted with changes to the proposed text published in the July 25, 2008, issue of the *Texas Register* (33 TexReg 5836). Sections 5.6401, 5.6402, 5.6404, 5.6405, 5.6409, and 5.6413 are adopted without changes and will not be republished.

REASONED JUSTIFICATION. The adopted amendments to §5.6403 and §5.6411 and adopted new §5.6402 are necessary to clarify and implement House Bill (HB) 472, enacted by the 80th Legislature, Regular Session, effective September 1, 2007, which amends the Labor Code Chapter 407A and the Insurance Code Chapter 4151. The remaining adopted amendments and new sections are adopted under the Labor Code Chapter 407A to better regulate the solvency and financial stability of workers' compensation self-insurance groups (groups); to ensure that workers' compensation benefits are available on a timely basis; to provide for greater flexibility and innovation; to more strictly conform to the statutory requirements of the Labor Code §407A.051(c)(12) and (13) and §407A.057; and to require additional oversight of a group's administrator, service companies, and third party administrators (delegated entities). Simultaneously with the adoption of the amendments and new sections, the Department has adopted the repeal of existing §5.6401 (relating to Purpose and Scope), §5.6402 (relating to Definitions), §5.6404 (relating to Notification to the Department), and §5.6409 (relating to Books and Records), which is also published in this issue of the *Texas Register.*

The Department posted an informal working draft of the proposed amendments and new sections on the Department's internet website from November 26 to December 14, 2007, and invited public input. The Department received several written comments regarding the informal working draft of the proposed amendments and new sections. Further, pursuant to the Labor Code §407A.455(3), the Department met with representatives of the Texas Self-Insurance Group Guaranty Fund (Fund) in January and February, 2008, to discuss the Fund's recommendations and concerns regarding the proposed amended and new sections. The Department also discussed the informal working draft of the proposed amendments and new sections with repre-

sentatives of the Fund and industry in a small workgroup. The Department exchanged at least two separate informal working drafts of the amendments and new sections with the small workgroup. As a result of the written comments provided by industry representatives and the collaborative discussions with the small workgroup, the Department modified several sections of the informal working draft of the proposed amendments and new sections to (i) clarify definitions; (ii) better define the roles and responsibilities of groups' delegated entities and their downstream subcontractors; (iii) clarify the information that must be submitted to the Department upon application for a certificate of approval; (iv) reduce unnecessary and duplicative administrative burdens related to bonds, biographical affidavits, and membership cancellation and termination notifications; (v) clarify contracting requirements; and (iv) permit the industry to take advantage of innovative, cost-saving methods of storing and maintaining books and records. Finally, the Department provided a copy of these final amendments to the small workgroup for further consideration in April, 2008. The Department formally proposed the amendments and new sections in the July 25, 2008, issue of the *Texas Register* (33 TexReg 5836). A public hearing on the rule proposal was held on October 8, 2008.

A public hearing on the rule proposal was held on October 8, 2008. In response to written comments on the published proposal and comments made at the hearing, the Department has changed some of the proposed language in the text of the rule as adopted. Additionally, this adoption includes minor clarification changes to several proposed provisions. None of the changes made to the proposed text, either as a result of comments or as a result of necessary clarification, materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

The following changes are made to the proposed text as a result of comments. Section 5.6403(c)(12)(B) as adopted requires a group to identify in its business plan any of its service companies, excluding any person identified pursuant to §5.6403(c)(12)(C), that perform one or more of the following services: (i) provide cash and asset management services to the group, including any person that has access to or disbursement authority over any of the group's assets and accounts; (ii) maintain the group's accounting records or organizational documents; (iii) store or maintain the group's electronic books and records, including a person identified by a group under §5.6409(b)(3); or (iv) provide management of a function for which the group retains ultimate responsibility for under the Insurance Code, the Labor Code, or rules adopted thereunder. This will result in the notification, bonding, contracting, and reporting requirements of the adopted rules applying only to a group's service companies that are third party administrators or perform one or more of the services specified in §5.6403(c)(12)(B)(i) - (iv) as adopted. Additionally, §5.6403(c)(12)(C) as adopted is changed to require the identity of certain parties in a group's business plan that are not considered service companies under §5.6403(c)(12)(B) as adopted. These parties include the group's accountant and actuary. These §5.6403(c)(12)(B) changes are the result of commenters objecting to what the commenters characterized as "the broad and unclear language" in proposed §5.6403(c)(12)(B). The commenters stated that the language "any service company that has management or discretionary decision making authority" does not clearly delineate which service companies must be included in the plan of operation. Commenters requested that proposed §5.6403(c)(12)(B) be clarified to apply to service companies with ultimate authority over payment of claims or that handle member contributions or distributions and with access to the group's accounts. According to the commenters, because the proposed language in §5.6403(c)(12)(B) is not clear, it may result in noncompliance and arguments at examination as to which entities have "management or discretionary decision making authority." Commenters also expressed concern that §5.6403(c)(12)(B) determines not only who must be included in a group's original business plan, but also which entities must have an individual written contract under proposed §5.6411 and also affects what notifications of changes in the information must be provided to the Department over time.

Section 5.6403(e) is changed to specify that the required biographical affidavit is the affidavit specified in §7.1604(b)(1)(C) of Title 28 of the Texas Administrative Code. This change is the result of a commenter recommending that the form of the affidavit be specified in the rules.

Section 5.6403(h) is changed as adopted to provide that "any other relevant information" required by the Commissioner to be submitted for purposes of determining whether to approve or disapprove an application for a certificate of approval must be relevant information that is "reasonably required" for the determination. This change is in response to a commenter that suggested that the statutory reasonableness requirement in the Labor Code §407A.051(b)(7) be included in §5.6403(h).

Section 5.6408(a) is changed as adopted to provide that fidelity bonds required of an administrator and a service company must protect against loss caused directly by an act of fraud or dishonesty by the employees of the administrator or service company and to provide that the group shall be the loss payee. This adopted provision is in lieu of proposed §5.6408(a) that provided that fidelity bonds required of an administrator and a service company must protect against an act of fraud or dishonesty by the administrator or service company in exercising its powers and duties as an administrator or service company and the fidelity bonds shall be made payable to the group. The change was prompted by a commenter who objected to proposed §5.6408(a). According to the commenter, the coverage specified in the proposal is likely not available. According to the commenter, the coverage exceeds the type of risks that can effectively be underwritten and covered by a fidelity bond. The commenter stated that a fidelity bond does not provide coverage for losses caused by the dishonesty of the business itself or the dishonesty of those that control the business. Additionally, references to the bond requirements of the Labor Code Chapter 407A and §5.6403(c)(6), (7), and (8) have been added in §5.6408(a) and (b), and (c) for purposes of clarity and readability. Therefore, §5.6408(a) has been revised to include a reference to the fidelity bond requirements of §5.6403(c)(6) and (7) as adopted. Section 5.6408(b) has been revised to include a reference to the performance bond requirements of the Labor Code §407A.057(a) and §5.6403(c)(8) as adopted. Section 5.6408(c) has also been revised to include a reference to the performance bond requirements of §5.6403(c)(8) as adopted.

Other necessary clarification changes to the proposed text include the following. The Department has also made clarification changes to proposed §5.6403(e) to clarify the requirements for biographical affidavits required from each member of the initial board of trustees of a group, subsequent members of the board of trustees of a group, and the executive officers of a person identified pursuant to §5.6403(c)(12)(A) or (B). As proposed, §5.6403(e) provided an option in certain circumstances under which the Department could accept a biographical affidavit

from these individuals that was already on file with the Department. As proposed, §5.6403(e) provided that (i) a biographical affidavit is not required if a biographical affidavit from the individual has been filed with the Department within the prior three years and contains substantially accurate information and (ii) a biographical affidavit contains substantially accurate information if the response given by the individual in the affidavit on file with the Department continues to indicate sufficient experience, ability, standing, and good record to make success of a group probable. Section §5.6403(e) as adopted has been clarified to read: "A biographical affidavit is not required if a biographical affidavit from the individual has been filed with the department within the prior three years and contains substantially accurate information. A biographical affidavit must demonstrate that the affiant has sufficient experience, ability, standing, and good record to make success of a group probable."

The Department has also made clarification changes to proposed §5.6411(b) to clarify the contracting requirements applicable to subcontractors and for consistency with the changes made to proposed §5.6403(c)(12)(B). As proposed, §5.6403(c)(12)(B) required a group to identify in its business plan any service company that had management or discretionary decision making authority relating to a function the group retained ultimate responsibility for under the Labor Code, the Insurance Code, or regulations adopted thereunder. This same language was also incorporated into the requirements of §5.6411(b). As proposed, §5.6411(b) required a person identified pursuant to §5.6403(c)(12)(A) or (B) who delegated to another party any of its management or discretionary decision making authority relating to a function a group retained ultimate responsibility for under the Labor Code, the Insurance Code, or regulations adopted thereunder to execute a written agreement with that delegated party. To clarify this contracting requirement and for consistency with the changes made to proposed §5.6403(c)(12)(B) in this adoption, §5.6411(b) as adopted reads: If a person identified pursuant to §5.6403(c)(12)(A) or (B) of this division delegates any of the services that it has agreed to provide on behalf of a group to another person, the delegating person shall execute a written agreement with the person to whom the services are delegated. The written agreement must meet the requirements of this section." In addition, the Department has determined that changes to the proposed text in §5.6411(e)(3)(A), (B), and (C) are necessary for clarification purposes, including clarification of the requirements to comply with other statutes and rules that address the transfer of a group's books and records. This clarification is added as a new §5.6411(e)(3)(C) in this adoption. Also, §5.6411(e)(3)(B) as adopted has been changed to specify the parties entering into the written agreement pursuant to subsection (a) or (b) of §5.6411. A minor clarification has been made to move the word "upon" that in the proposal was in subsection (e)(3) to subsection (e)(3)(A). Section §5.6411(e)(3) as adopted reads: A written agreement entered into pursuant to subsection (a) or (b) of this section shall also ensure that the books and records of the group . . . (3) will be timely transferred to the group or its designee: (A) upon request of the group; (B) at the termination or cancellation of a written agreement entered into by an administrator, service company, or third party administrator pursuant to subsection (a) or (b) of this section; and (C) in compliance with all applicable statutory and rule requirements.

Section 5.6412(a) and (b)(2) as proposed have been clarified in the adoption to specify "any person that is required to enter into a written agreement" pursuant to §5.6411(a) or (b) of this division with regard to oversight of such person in subsection (a) and with regard to submission of quarterly reports by such person in subsection (b)(2). The proposal was more general, applying the requirements to any person entering into a written agreement. Section 5.6412(a) as adopted reads: "A group shall annually adopt an operational review plan that provides for sufficient oversight of any person who is required to enter into a written agreement pursuant to §5.6411(a) or (b) of this division (relating to Contract Provisions). The group may modify the operational review plan at any time in order to meet the group's needs." Section §5.6411(b)(2) as adopted reads: (b) The operational review plan shall, at a minimum: . . . (2) require any person that is required to enter into a written agreement pursuant to §5.6411(a) or (b) of this division to submit quarterly reports to the group containing the following information, as applicable:".

Also, one minor change has been made to correct a typographical error. In adopted §5.6412(a), the word "relating" was misspelled in the published proposal and has been corrected in this adoption.

The following paragraphs provide a brief summary as well as an analysis of the reasons for the adopted amendments and new sections, with specific emphasis on: (i) significant definitional changes to the Labor Code §407A.001 resulting from the enactment of HB 472 and the Department's clarification of these definitional changes; (ii) the significance and method of properly categorizing a delegated entity under the adopted amended and new sections; and (iii) the significance of ensuring the financial solvency of groups, including excess insurance, contracting, and oversight and operational review requirements.

Definitional Changes and Related Implementation Matters. HB 472 enacts two significant changes to the Labor Code Chapter 407A that affect the regulation of a group's delegated entities. First, HB 472 amends the Labor Code §407A.001 to include the definition of the new term *managing company.* This new definition duplicates the definition of the term *administrator* in the Labor Code §407A.001(a)(1), which existed prior to the enactment of HB 472, but was not amended by HB 472. As a result, the Labor Code Chapter 407A contains two separate terms with the same definition. The terms *administrator and managing company* are both defined in the Labor Code Chapter 407A to mean "an individual, partnership, or corporation engaged by the board of trustees of a group to implement the policies established by the board of trustees and to provide day-to-day management of the group." HB 472 also amends the definition of the term *service company* in the Labor Code §407A.001(a)(8), which existed prior to the enactment of HB 472, by replacing the reference to *administrator* with a new reference to *managing company.* Second, HB 472 enacts the Labor Code §407A.009, which creates a new substantive licensing requirement for administrators and service companies performing the acts of an administrator, as that term is defined in the Insurance Code Chapter 4151. The adopted amendments to §5.6403 and §5.6411 and adopted new §5.6402 are necessary to clarify the meaning of and requirements relating to *administrators and managing companies* and to implement the other amendments enacted in HB 472.

First, the addition of the term *managing company* to the Labor Code Chapter 407A is addressed to clarify the statutory responsibilities of a group's delegated entities. For example, while an administrator and managing company are identically defined in the chapter, the Labor Code §407A.009 requires only an administrator under the Labor Code Chapter 407A performing the activities of an administrator, as that term is

defined under the Insurance Code Chapter 4151, to hold a certificate of authority under the Insurance Code Chapter 4151. Additionally, although an administrator and managing company are identically defined in the Labor Code §407A.001(a)(1) and (5-a), the amended definition of the term *service company* in the Labor Code §407A.001(a)(8) only references the term *managing company.* The Labor Code §407A.001(a)(8) defines the term service company to mean a person that provides services to the group, other than services provided by the managing company, including claims adjustment; safety engineering; compilation of statistics and the preparation of premium, loss, and tax reports; preparation of other required self-insurance reports; development of members' assessments and fees; and administration of a claim fund. The delineation of the roles and associated responsibilities of a group's delegated entities under the Labor Code Chapter 407A are of particular importance because the Labor Code Chapter 407A prescribes certain requirements that apply only to one type of delegated entity or the other. As such, it is necessary to clarify the roles and responsibilities of each type of delegated entity, while remaining consistent with the provisions of the Labor Code Chapter 407A.

Clarification Related to Prior Treatment of Administrators and Service Companies. Prior to the enactment of HB 472, the Labor Code Chapter 407A recognized only two types of delegated entities of a group--an administrator and a service company. Accordingly, the Labor Code Chapter 407A prescribed specific requirements applicable to either an administrator or a service company. For instance, pursuant to the Labor Code §407A.152, a group was required to engage an administrator to perform its day-to-day management. However, while a group was permitted to also engage the services of a service company, it was not required to do so. Additionally, the Labor Code §407A.051(c)(12) required an administrator to obtain a $250,000 fidelity bond, while under the Labor Code §407A.051(c)(13) and §407A.057, certain qualifying service companies were required to obtain a $250,000 fidelity bond and a $250,000 performance bond. Further, prior to the enactment of HB 472, neither an administrator nor a service company under the Labor Code Chapter 407A was required to hold a certificate of authority to perform the acts of an administrator, as that term is defined in the Insurance Code Chapter 4151, with respect to workers' compensation benefits. Thus, the Labor Code Chapter 407A required categorization of an entity as an administrator or a service company, and each entity was subject only to the requirements of the Labor Code, the Insurance Code, and Department regulations that applied to an administrator or service company, in accordance with such categorization.

The adopted amendments and new sections address the need for clarification of these previously distinct categorizations and associated obligations that arose subsequent to HB 472. HB 472 specifically applies requirements to certain delegated entities of a group, such as administrators and service companies, but does not address the application of these requirements to a managing company, another delegated entity of a group. Further, HB 472 defines an administrator and a managing company identically. This identical definition for these two separate terms raises the question of whether a requirement of HB 472, that by the plain language of the statute applies to an administrator, but not to a managing company, also applies to a managing company under the Labor Code Chapter 407A. For instance, HB 472 requires an administrator or a service company under the Labor Code Chapter 407A performing the acts of an administrator, as that term is defined in the Insurance Code Chapter 4151, to hold a certificate of authority under the Insurance Code Chapter 4151. Under a literal interpretation of this requirement, an individual, partnership, or corporation engaged by the board of trustees of a group to implement the policies established by the board of trustees and to provide day-to day management of the group could arguably opt to call itself a managing company, thereby escaping this additional licensing requirement. However, if the same entity opts to calls itself an administrator, the statute plainly requires its licensure under the Insurance Code Chapter 4151. A determination of whether the entity is subject to the licensing requirements of the Insurance Code Chapter 4151 based upon the entity's own categorization of itself, either as an administrator or a managing company, may result in unintended public policy concerns, such as inconsistent application of the licensing requirements of the Insurance Code Chapter 4151. If an administrator and a managing company are identically defined under the Labor Code §407A.001, it would be inconsistent to interpret the statute to apply one requirement under the Labor Code Chapter 407A to an administrator while not applying the same requirement to a managing company. Because of the identical statutory definitions and the lack of any further differentiating delineations in the Labor Code Chapter 407A, the Department is unable to make any distinction between an administrator and a managing company to determine which requirements, functions, or exemptions should apply to one and not the other. Therefore, the Department has determined that, if a requirement applies to either an administrator or a managing company under the Labor Code Chapter 407A, then it must necessarily apply to both, by virtue of the fact that the two entities are identically defined and perform the same services for a group. This interpretation is consistent with the requirements of the Government Code Chapter 311. Further, a service company is statutorily defined in the Labor Code §407A.001(a)(8) by referencing a managing company. However, this definition must also intuitively include a reference to an administrator, as well. If the usage of the terms *administrator* and *managing company* in the Labor Code Chapter 407A are not clarified so that reference to one term necessarily includes reference to the other term, then the requirements of the Labor Code Chapter 407A cannot be given their intended effect. The chapter's requirements will result in inconsistent application, as determinations regarding whether a particular requirement applies to a specific delegated entity may be based upon how that entity categorizes itself--as an administrator or as a managing company.

Adopted Provisions to Clarify and Effectuate Legislative Intent. The adopted amendments to §5.6403 and §5.6411 and new §5.6402 are necessary to effectuate the legislative intent of HB 472 and to provide uniform application of the requirements of the Labor Code Chapter 407A. First, adopted new §5.6402 clarifies the meaning of the term *administrator* to include and have the same meaning as the term *managing company* in all contexts. Further, there are no other references to the term *managing company* in this division. Thus, to the extent that the requirements of the Labor Code Chapter 407A apply to either an administrator or a managing company, this division implements those requirements with respect to an administrator, which necessarily encompasses a managing company in all contexts and without distinction. To this end, adopted new §5.6402 also provides a definition of the term *service company* that includes a reference to the term *administrator,* which necessarily encompasses a managing company in all contexts and without distinction. Because HB 472 subjects a group's delegated entities that perform the acts of an administrator, as that term is defined in the Insurance Code Chapter 4151, to the requirements of the Insurance Code Chapter 4151, adopted

new §5.6402 also prescribes a definition for the new term *third party administrator.* This definition is necessary to implement the portions of HB 472 that specifically relate to a group's administrator, which also encompasses a managing company in all contexts and without distinction, and its service companies. This definition is used throughout this division to refer to a group's delegated entities that also perform regulated services under the Insurance Code Chapter 4151.

Categorization of Delegated Entities Under Adopted New §5.6402. In general, the applicability of this division to a particular delegated entity depends entirely upon that entity's categorization under adopted new §5.6402. The categorization of an entity under adopted new §5.6402 is based upon the services performed by the particular entity on behalf of a group. First, an administrator under adopted new §5.6402(a)(2) is defined as an individual, partnership, or corporation engaged by the board of trustees of a group to implement the policies established by the board of trustees and to provide day-to-day management of the group. Adopted new §5.6402(a)(2) also identifies several of the functions that may be performed by a group's administrator. However, the enumerated functions are illustrative only and are not an exhaustive listing of the functions that an administrator may perform on behalf of a group. In other words, adopted new §5.6402(a)(2) does not, in any way, prohibit an administrator from performing functions that are not specifically enumerated in adopted new §5.6402(a)(2). Second, adopted new §5.6402(a)(12) defines a service company as a person that directly or indirectly provides services to or on behalf of a group, other than the services provided to the group by an administrator. Like adopted new §5.6402(a)(2), adopted new §5.6402(a)(12) also identifies several of the services that may be performed by a service company on behalf of a group. Again, however, the enumerated services are illustrative only and are not an exhaustive listing of the services that a service company may perform on behalf of a group. In other words, adopted new §5.6402(a)(12) does not prohibit a service company from performing services not specifically enumerated in adopted new §5.6402(a)(12), provided that those services are not already being performed by the group's administrator. Adopted new §5.6402(a)(12) makes clear that a service company may not perform a service on behalf of a group that is already being performed by an administrator for that same group. Lastly, adopted new §5.6402(a)(13) defines a third party administrator as an administrator or service company, as those terms are defined in this division, who holds itself out or acts as an administrator, as that term is defined in the Insurance Code §4151.001(1). This definition is necessary to provide the proper identification of administrators or service companies that collect premiums or contributions from or adjust or settle claims for residents of this state that are related to workers' compensation benefits. While third party administrators, as defined in adopted new §5.6402(a)(13), will also be subject to separate Department regulations applicable to all administrators, as that term is defined in the Insurance Code §4151.001(1), this division prescribes the requirements that will only apply to third party administrators performing delegated services on behalf of groups. Thus, the adopted requirements in this division will not generally apply to all administrators, as that term is defined in the Insurance Code §4151.001(1). Rather, the adopted requirements in this division will apply only to those administrators, as that term is defined in the Insurance Code §4151.001(1), that are also third party administrators, as defined by adopted new §5.6402(a)(13).

Finally, it is important for a group to become familiar with the characterizations of its delegated entities under adopted new §5.6402 because a group's responsibilities under the adopted amended and new sections will often depend upon the appropriate identification of its delegated entities. For example, adopted amended §5.6403(c)(6), (7), and (8) require an applicant to submit fidelity and performance bonds for its administrator, service companies, and service companies performing claims services with its application for a certificate of approval. The specific amount and format of these bonds differ depending upon whether the delegated entity is categorized under the Labor Code Chapter 407A as an administrator, a service company, or a service company providing claims services. Thus, in order to comply with the adopted amendment to §5.6403(c)(6), (7), and (8), an applicant must properly categorize its delegated entities under adopted new §5.6402. This division also requires groups to comply with certain contracting, reporting, oversight and operational review requirements, all of which depend upon the specific categorization of a group's delegated entities. Without properly categorizing its delegated entities under adopted new §5.6402, a group cannot fully comply with the requirements of this division.

It is also significant to recognize that an entity may be categorized differently depending upon the services that entity is performing and on whose behalf those services are being performed. For example, adopted new §5.6402(b) - (e) makes clear that an entity may act as: (i) an administrator for more than one group, in which case the entity would be subject to the requirements of this division that apply specifically to administrators; (ii) the administrator for one group and a service company for another group, in which case the entity would be subject to the requirements of this division that apply to administrators and service companies; or (iii) the administrator or service company for one group and a third party administrator for another group, in which case the entity would be subject to the requirements of this division that apply to administrators or service companies, and third party administrators, as well as other Department regulations relating to administrators, as that term is defined under the Insurance Code Chapter 4151. In instances where a single entity performs various services for more than one group or performs various services for the same group, it is imperative for that entity and group to properly categorize the entity under adopted new §5.6402 in order to fully comply with the requirements of this division.

It should also be noted that adopted new §5.6402(e) prohibits an individual, partnership, or corporation from acting as an administrator and a service company for the same group at the same time. This limitation is based on the definition of *service company* in the Labor Code §407A.001(8) and the clarified definitions of *administrator and service company* in adopted new §5.6402(a)(2) and (12) of this division, which define a service company as a person that directly or indirectly provides services to or on behalf of a group, *other than those services provided by an administrator.* While both an administrator and a service company may provide the same kinds of services to a group, a group must designate an individual, partnership, or corporation to serve as its administrator pursuant to the Labor Code §407A.152. The group may delegate any service it is responsible for performing to its administrator. Any service that *is not* delegated to or performed by a group's administrator may be delegated to a service company directly or indirectly. This interpretation is consistent with the statutory definition of *service company* in the Labor Code §407A.001(a)(8), which contemplates

such an arrangement. Adopted new §5.6402(e) does not, in any way, limit the services that may be performed by either an administrator or a service company. Rather, adopted new §5.6402(e) clarifies that an entity may not be categorized as an administrator and a service company for the same group at the same time.

Examples of Categorizing Delegated Entities Under the Adopted Sections. The complexity of categorizing a group's delegated entities can be best illustrated through a series of examples. For instance, in example number one, if an entity (Entity 1) is engaged by a group to perform safety engineering services, compilation of statistics, and day-to-day management functions for a group (Group 1), Entity 1 is categorized as an administrator under adopted new §5.6402(a)(2). This is because Entity 1 is engaged to perform day-to-day management functions of Group 1, which is the defining characteristic of an administrator under the Labor Code §407A.001(1) and adopted new §5.6402(a)(2). Adopted new §5.6402(a)(2) also clarifies that an administrator may perform a wide variety of services and/or functions on behalf of the group, including safety engineering and compilation of statistics. In example number two, however, if Entity 1 performs safety engineering services and compilation of statistics for another group (Group 2) which are not being performed by any other entity for Group 2, but is not engaged by Group 2 to provide day-to-day management functions and/or services, Entity 1 is categorized as a service company for Group 2 under adopted new §5.6402(a)(12), but retains its categorization as an administrator under adopted new §5.6402(a)(2) for Group 1. This is because, in example number two, Group 2 did not engage Entity 1 to provide day-to-day management functions and/or services. Because Entity 1 is not engaged by Group 2 to act as its administrator, Entity 1 is performing services on behalf of Group 2 other than those performed by the group's administrator. As such, Entity 1 meets the definition of a service company under adopted new §5.6402(a)(12) with respect to Group 2. However, because adopted new §5.6402(d) specifically permits an entity to act as an administrator for one group and a service company for another group, Entity 1 also retains its categorization as the administrator of Group 1. In example number three, if Entity 1 is not engaged by Group 3 to provide day-to-day management functions, but performs safety engineering services, compilation of statistics, and also performs the acts of an administrator, as that term is defined under the Insurance Code Chapter 4151, on behalf of Group 3, and assuming that none of these services are being performed by another entity on behalf of Group 3, Entity 1 is now categorized as a service company and a third party administrator under adopted new §5.6402(a)(2) and (13) for Group 3. However, Entity 1 also retains its categorization as the administrator of Group 1 and the service company of Group 2. Thus, in order for delegated entities and groups to fully comply with the requirements of this division, each delegated entity must be properly categorized under adopted new §5.6402 based upon the delegated services the entity performs on behalf of each group.

Downstream Subcontractors. Lastly, the adopted amendments and new sections do not prohibit an administrator, service company, or third party administrator from further delegating the performance of a specific service to another administrator, service company, or third party administrator (downstream subcontractors). In these situations, however, it is still necessary for each delegated entity and its downstream subcontractors to comply with the applicable requirements of this division. Thus, each downstream subcontractor is subject to categorization under adopted new §5.6402, based upon the services the downstream subcontractor is directly or indirectly performing on behalf of a particular group. Because adopted new §5.6402(b) makes clear that a group may engage only one administrator, any further delegation of a service of an administrator, service company, or third party administrator to a downstream subcontractor will necessarily categorize the downstream subcontractor as a service company or a third party administrator--even if the downstream subcontractor is originally categorized as an administrator under adopted new §5.6402(a)(2) with regard to other delegated services performed for another group. For example, if the administrator (Administrator 1) of Group 1 further delegates services to another administrator (Administrator 2) of another group (Group 2), Administrator 2 is categorized as a service company or third party administrator, depending upon the nature of the services delegated, for Group 1. Administrator 2 retains its categorization as an administrator for Group 2. Likewise, if a service company of Group 1 further delegates services to another entity, that entity is also categorized as a service company for Group 1.

Adopted Financial Solvency Requirements, Including Excess Insurance, Contracting, and Oversight and Operational Review Requirements. The adopted amendments to §§5.6403, 5.6405, and 5.6411, and adopted new §§5.6404, 5.6412, and 5.6413 are necessary to augment a group's solvency and financial requirements, to require oversight of a group's delegated entities, to ensure that workers' compensation benefits are available on a timely basis, and to earlier detect a group's potential hazardous financial conditions. Because Texas had little experience with workers' compensation group self-insurance before 2003, many of the existing initial regulations were modeled after general regulatory requirements applicable to either individual self-insured employers or other workers' compensation insurers. However, several factors unique to the workers' compensation group self-insurance market have since highlighted the need for additional excess insurance requirements and stricter oversight and monitoring of a group's delegated entities. As a result, the Department is adopting amendments to §§5.6403, 5.6405, 5.6411, and new §§5,6404, 5.6412, and 5.6413.

Pursuant to the Labor Code §407A.051, the adopted amendment to §5.6403(c)(12) requires a group to submit a general business plan or plan of operation describing the group's general business activities, safety program, and organization to the Department as part of its application for a certificate of approval. Additionally, the adopted amendment to §5.6403(c)(12)(A) requires a group's business plan or plan of operation to include the identity of the group's administrator and any third party administrator that provides services to or on behalf of the group. Under this requirement, a group's business plan or plan of operation must also identify a delegated entity's downstream subcontractors, if those downstream subcontractors are categorized as third party administrators under adopted §5.6402(a)(13) of this division for that group. The adopted amendment to §5.6403(c)(12)(B) requires a group's business plan or plan of operation to provide the identity of any service company that performs one or more of the following services: (i) provides cash and asset management services to a group, including any person that has access to or disbursement authority over any of the group's assets and accounts; (ii) maintains the group's accounting records or organizational documents; (iii) stores or maintains the group's electronic books and records, including a person identified by a group under §5.6409(b)(3); or (iv) provides management of a function for which the group retains ultimate responsibility for under the Insurance Code, the Labor Code, or rules adopted thereunder. The adopted

amendment to §5.6403(c)(12)(B) also applies to any downstream subcontractor that is categorized as a service company under adopted §5.6402(a)(12) and meets the requirements of §5.6403(c)(12)(B).

Pursuant to the Labor Code §407A.051(d), adopted new §5.6404 is necessary to clarify a group's ongoing maintenance of qualification requirements. Adopted new §5.6404(a) requires a group to provide written notice to the Department of any change in the information filed by the group under the Labor Code §407A.051(c) or adopted §5.6403 of this division (relating to Application for Initial Certificate of Approval) or the group's manner of compliance with the Labor Code §407A.051(c) or adopted §5.6403 of this division no later than 30 days after the effective date of the change. For example, if a group files its initial application for a certificate of approval with the Department and identifies Administrator A as its administrator, but later wishes to engage the services of Administrator B in lieu of Administrator A, adopted new §5.6404(a) requires that group to notify the Department of such a change, because proper identification of a group's administrator is required pursuant to adopted §5.6403(c)(12)(A) of this division. Adopted new §5.6404(b) clarifies that a group must meet the requirements of the Labor Code §407A.051(c) and adopted §5.6403 of this division, as those requirements apply to any change of information identified by a group under adopted new §5.6404(a) of this division. This provision makes clear that any change a group makes with regard to the information it files with the Department pursuant to adopted §5.6403 of this division or the Labor Code §407A.051(c) must still comply with the requirements of adopted §5.6403 of this division and the Labor Code §407A.051(c). For example, if a group changes its administrator, the group must still meet the requirements of adopted §5.6403 of this division and the Labor Code §407A.051(c) that relate to a group's administrator, such as providing an appropriate fidelity bond for the new administrator. This is because a fidelity bond for an administrator is required under adopted §5.6403(c)(6) of this division and the Labor Code §407A.051(c), and the group must meet such requirement in its initial filing with the Department. Finally, adopted new §5.6404(e) requires a group to maintain the qualifications necessary to obtain a certificate of approval under the Labor Code Chapter 407A at all times. For example, pursuant to the Labor Code §407A.053(a), a group must meet the requirements of the Labor Code §407A.053(c) in order to obtain a certificate of approval under the Labor Code Chapter 407A. The Labor Code §407A.053(c) requires a group to post security in the form and amount prescribed by the Commissioner, equal to the greater of $300,000 or 25 percent of the group's total incurred liabilities for workers' compensation. Under one example, it is assumed that an applicant posts security in the amount of $300,000 at the initial time of application for a certificate of approval under the Labor Code Chapter 407A, and at that time, $300,000 is greater than 25 percent of the group's projected total incurred liabilities. One year later, however, under the example, it is assumed that 25 percent of the group's total incurred liabilities for workers' compensation is $500,000. Adopted new §5.6404(e) makes clear that, in this example, the group is now required to post security in the amount of $500,000, because this amount is greater than the original $300,000 posted by the group, and the group must meet the requirements of the Labor Code §407A.053(c) in order to obtain and maintain its certificate of approval under the Labor Code Chapter 407A.

Pursuant to the Labor Code §407A.054(b), the adopted amendment to §5.6405(a) requires a group to obtain specific excess insurance for losses that exceed a group's retention in an amount that will pay all benefits required under the Labor Code and rules adopted thereunder for a compensable claim. A group obtaining an excess insurance policy meeting this requirement is responsible for paying workers' compensation benefits up to a certain, stated retention amount under the policy. If a claim requires benefit payments beyond the stated retention amount in the policy, the excess insurance carrier is responsible for reimbursing the group for the payment of the benefits that exceed the group's stated retention amount, through the life of the claim. This requirement serves two important purposes. First, it increases the likelihood that an injured worker's claim will be paid timely and that sufficient funding will be available to pay the required benefits for the claim, even if the total amount of the claim, over the life of the claim, is extraordinarily high. Second, it enhances a group's financial health by reducing the financial impact of a catastrophic claim on a group's financial resources. For example, §5.6405(a) prior to this adoption required a group to obtain specific excess insurance in an amount of at least $5 million per occurrence. In one example, it is assumed a group obtains a specific excess insurance policy in the amount of $5 million per occurrence with a $1 million retention amount. If a group's member's employee sustains a catastrophic injury that totals $15 million in benefits payable over the life of the claim, the group, after paying the policy's retention amount of $1 million, remains responsible for paying the remaining $9 million for that claim, without reimbursement from the excess insurer. This effect is amplified each time a member's employee sustains a catastrophic injury. So, in this example, if the group sustains two separate catastrophic claims, each totaling $15 million in benefits payable over the life of each claim, the group may not be able to withstand the financial burden of $20 million in total benefits payable over the lives of those two claims. A group's potential financial peril is further highlighted in this example when considering that the group remains responsible for paying all compensable benefits accruing below its stated retention amount of $1 million, in addition to the compensable benefits that exceed its specific excess insurance policy limits of $5 million. In such an event, a group's reserves may become depleted, thereby requiring the group to assess its members for the shortfall. Further, if a particular member of the group is unable to meet the additional assessment obligations, the other members of the group could be required to make up the difference because of their joint and several liability. This could result in some members paying a disproportionate share of the group's assessment. If the group in this example is still unable to collect the necessary assessments from its members, and is declared insolvent, the Texas Group Self-Insurance Guaranty Fund will be responsible for the additional funds necessary to cover the incurred liabilities of the insolvent group. If the Fund is unable to cover these incurred liabilities from the funding available to it from its trust fund, pursuant to the Labor Code §407A.458(e), the Fund is then authorized to assess all other groups for the remaining deficiency. Thus, where a group does not have adequate excess insurance coverage, the financial implications of a catastrophic claim can be devastating and far-reaching, effecting interests far beyond that of the individual group sustaining the claims. A group may obtain additional aggregate excess insurance coverage to lessen the financial impact of the compensable claims accruing below the group's stated retention amount in its specific excess insurance policy. However, because the Labor Code Chapter 407A does not require a group to obtain such aggregate coverage, a

group not voluntarily obtaining such coverage is still subject to the financial risks highlighted in the previous example.

The adopted amendment to §5.6405(a) reduces these financial risks, however, by requiring a group to obtain specific excess insurance for losses that exceed a group's retention in an amount that will pay all benefits required under the Labor Code and rules adopted thereunder for a compensable claim. This requirement should better protect the financial solvency and operating condition of the group, as well as provide additional assurance that workers' compensation claims are able to be timely and prudently paid. For example, under this requirement, assume that a group obtains a specific excess insurance policy that complies with the adopted amendment to §5.6405(a) and that the group is responsible for paying a $1 million retention amount under the policy for each claim. In this example, if an employee of a member of a group sustains a compensable injury totaling $15 million over the life of the claim, the group's specific excess insurer is responsible for reimbursing the group for the payment of benefits for the claim that exceed the group's $1 million retention amount under the policy. In that event and under the terms of the specific excess insurance policy, the group should not be responsible for paying the additional $14 million in benefits payable for that compensable claim without receiving reimbursement from the excess insurer. This heightened excess insurance requirement in the adopted amendment to §5.6405(a) is intended to provide an enhanced mechanism that will allow a group to satisfy its financial obligations associated with catastrophic claims, while mitigating the risk of endangering or creating a hazardous condition for the group. This should also ensure an overall healthier workers' compensation system in Texas.

The Department recognizes, however, that specific excess insurance policies meeting the requirements of the adopted amendment to §5.6405(a) may not always be necessary. Thus, the adopted amendment to §5.6405(c) permits a group to petition the Department to obtain excess insurance in a different amount than the amount required by the adopted amendment to §5.6405(a), subject to a minimum floor of $10 million per occurrence. Under the adopted amendment to §5.6405(c), a group must submit an analysis prepared by an actuary of the group explaining the appropriateness of the requested level of specific excess insurance coverage for the group. Additionally, pursuant to the Labor Code §407A.054(b), the Commissioner must consider the current market conditions; a group's size, types of employment, years in existence, and risk exposure; other forms, if any, of additional financial security available to the group; and any other relevant factor in determining whether to grant a group's petition filed under the adopted amendment to §5.6405(c). However, the adopted amendment to §5.6405(c) also provides that in no event will the Commissioner approve a group's petition for specific excess insurance coverage that is less than $10 million per occurrence. This prohibition establishes the minimum amount of specific excess insurance coverage that a group must obtain and provides a minimum level of protection for a group against its exposure to catastrophic compensable claims. Overall, the adopted amendment to §5.6405 achieves an appropriate balance between ensuring the success of the workers' compensation system by reducing a group's unlimited exposure to catastrophic compensable claims payments and providing groups with a certain level of flexibility to tailor their excess insurance needs to their unique circumstances in the appropriate instances.

The adopted amendment to §5.6411 and adopted new §5.6412 apply to the oversight of a group's delegated entities. While a group's use of delegated entities may provide cost savings and access to entities with specialized management skills, it also presents special challenges. Because a group's delegated entities often have access to, or control of, the group's funds, accounts, claims files, and records, there is a greater opportunity for fraud and mismanagement by the delegated entities. For example, the Department is aware of an instance where an administrator failed to timely inform a group that the group was operating in a potentially hazardous financial condition. In that instance, the group was not made fully aware of the financial statement and its operational implications for a prolonged period of time. Further, the Department has been informed of instances where a group's administrator poorly monitored group membership, to the point that certain members did not properly execute indemnity agreements. Lastly, the Department is aware that some groups lack sufficient internal oversight processes over their delegated entities, making it difficult for these groups to adequately oversee the performance of their delegated entities. As a result, the adopted amendment to §5.6411 and adopted new §5.6412 require a group to implement and maintain a minimal level of oversight and responsibility for the actions of its delegated entities. These requirements are especially important because a group retains the ultimate responsibility and accountability for each service its delegated entities perform. Thus, it is imperative that a group monitor the activities of its delegated entities to ensure their compliance with the Insurance Code, the Labor Code, and the regulations adopted thereunder.

To this end, the adopted amendment to §5.6411 imposes minimal contracting requirements between: (i) a group and its delegated entities; and (ii) between a delegated entity and its downstream subcontractors in certain circumstances. The adopted amendment to §5.6411 first requires a group to enter into a written agreement with any person identified pursuant to §5.6403(c)(12)(A) or (B). Additionally, the adopted amendment to §5.6411 requires the written agreement to contain certain provisions that clearly delineate the roles and responsibilities of the contracting parties. These requirements ensure that both the group and its delegated entity understand their responsibilities under the agreement. Additionally, these requirements establish a group's expectations related to the performance of the delegated duties. For example, the adopted amendment to §5.6411(d) requires a group to describe the specific duties or services the delegated entity is expected to provide on its behalf, including any applicable instructions related to the performance of those duties or services. The adopted amendment to §5.6411(d) also requires each written agreement to contain a provision requiring each delegated entity to hold the appropriate licenses or certificates of authority required under the Labor Code or the Insurance Code. These minimal requirements serve an important purpose. Because a group retains ultimate responsibility and accountability for all of its delegated services, each group should be familiar with its delegated entities and the services they are performing on the group's behalf. In order for a group to exercise appropriate oversight over its delegated entities, it must first identify: (i) its delegated entities; (ii) what services those delegated entities will be performing; and (iii) what its expectations are with respect to the performance of those services. Once those expectations are memorialized in a written agreement between the group and its delegated entities, it is easier for the group to monitor and ensure that its delegated entities are, in fact, performing those services in accordance with the terms of the written agreement.

The adopted amendment to §5.6411 also addresses continuity of services and continuing access to a group's books and records. The Department is aware of situations where administrators, as that term is defined under the Insurance Code Chapter 4151, have refused to timely return the books and records of an insurer or have denied access to an insurer's books and records. These situations typically involved an insurer that decided to end the employment of one Chapter 4151 administrator and employ the services of another Chapter 4151 administrator. These situations also usually occurred when there was an inadequate written agreement between the parties, or where the written agreement between the parties did not sufficiently address transition and ownership issues. While these particular instances involved insurers, the regulatory concern for groups is the same. A delegated entity's refusal to provide a group with access to its own books and records may result in a potentially hazardous condition and have widespread negative results, especially with regard to the payment of workers' compensation claims. A group may not be able to comply with the requirements of the Insurance Code or the Labor Code without knowing which of its claims has been paid or which of its claims remain outstanding. Additionally, a group may be put into a hazardous financial condition if it is unable to access its financial books and records. In an effort to prevent these situations, the adopted amendment to §5.6411(d) requires a written agreement between a group and its delegated entities to include a provision addressing continuity of services, including run-off fee schedules and the transfer of the books and records of a group from one administrator, service company, or third party administrator to another administrator, service company, or third party administrator. Additionally, the adopted amendment to §5.6411(e) requires that each written agreement between the group and its delegated entities ensure that the group has ongoing, continuing access to its books and records at all times.

The adopted amendment to §5.6411(b) also requires a group's delegated entities to execute written agreements with their downstream subcontractors. The written agreement between the group's delegated entity and its downstream subcontractor must meet the same requirements as a written agreement between a group and a delegated entity. This requirement is necessary to ensure continuing oversight of a group's delegated entities. The more times that a particular service is delegated from one entity to another, the greater the risk of non-performance or inadequate performance of that service becomes. A group retains ultimate responsibility and accountability for each service regulated under the Labor Code, the Insurance Code, or regulations adopted thereunder, regardless of the number of times the performance of that service is delegated from one entity to another. Requiring a written agreement between a group's delegated entities and their downstream subcontractors assists a group in exercising oversight over these downstream subcontractors to ensure that: (i) the delegated services are being performed accurately, timely, and in accordance with the group's instructions and expectations; (ii) the group knows which entity is responsible for performing the delegated services at all times; (iii) the group knows which entity has possession of, or access to, its books and records; and (iv) the group retains the ownership of, and access to, its books and records at all times.

To further emphasize the importance of a group's regular oversight over its delegated entities, adopted new §5.6412 requires the board of trustees of a group to adopt an annual operational review plan that provides for sufficient oversight of a group's delegated entities and their downstream subcontractors. Adopted new §5.6412 highlights the types of information that a group should request from its delegated entities and their downstream subcontractors and review on a regular basis. Reviewing this information should enable a group to better assess its ability to meet its obligations under the Labor Code, the Insurance Code, and regulations adopted thereunder. Additionally, it is anticipated that a group's regular review of the required information will enable the group to foresee potential financial problems, management issues, or solvency issues at a much earlier date, so that corrective action can be taken immediately. Further, adopted new §5.6412 emphasizes the importance of each group establishing its own performance goals and reviewing the performance of its delegated entities and their downstream subcontractors to determine if those goals are being met. Lastly, adopted new §5.6412 requires the board of trustees of a group to consider the information submitted by the group's delegated entities and their downstream subcontractors pursuant to the group's operational review plan and to make appropriate recommendations based upon that information. By regularly monitoring and overseeing its delegated entities and their downstream subcontractors, a group will obtain a better idea of its own capabilities, strengths, and weaknesses, which should result in financially healthier groups.

Pursuant to the Labor Code §407A.201(c), adopted new §5.6413 specifies the notification requirements for when a group experiences a reduction in its membership. Adopted new §5.6413(a) requires a group to notify the Commissioner only if the group experiences a reduction in its membership caused by either cancellation or termination, resulting in a cumulative reduction of 10 percent or more of its annual written premium, not later than the 10th day after the date on which the cumulative reduction in membership takes effect.

Clarification of Existing Rules. The remaining adopted amendments and new sections are a result of collaborative discussion with industry representatives and stakeholders regarding the clarification and reconsideration of the existing regulations.

First, the adopted amendment to §5.6403 is necessary to clarify the bonding requirements of the Labor Code Chapter 407A for administrators, service companies, and service companies providing claims services. The adopted amendment to §5.6403(c)(6) requires an administrator to obtain a fidelity bond in the amount of $250,000. Additionally, the fidelity bond must meet the requirements of adopted §5.6408 of this division (relating to Fidelity and Performance Bonds), which further specifies the required content and form of the bond. If an entity acts as an administrator for more than one group, that entity must obtain a new fidelity bond in the amount of $250,000 that meets the requirements of adopted §5.6403(c)(6) of this division for each group for which the entity acts as an administrator. The adopted amendment to §5.6403(c)(7) requires each service company identified pursuant to adopted §5.6403(c)(12)(A) or (B) of this division, if there is one, to obtain a fidelity bond in the amount of $250,000. The adopted amendment to §5.6403(c)(7) also requires this fidelity bond to meet the requirements of adopted §5.6408 of this division. If an entity acts as a service company for more than one group, that entity must obtain a new fidelity bond in the amount of $250,000 that meets the requirements of adopted §5.6403(c)(7) of this division for each group for which the entity acts as a service company and is identified by that group under adopted §5.6403(c)(12)(A) or (B) of this division. Lastly, the adopted amendment to §5.6403(c)(8) requires each service company identified pursuant to adopted

§5.6403(c)(12)(A) of this division that provides claims services to or on behalf of a group, if there is one, to obtain a performance bond in the amount of $250,000. The adopted amendment to §5.6403(c)(8) makes clear that this performance bond is in addition to the fidelity bond required in adopted §5.6403(c)(7) for a service company. Further, the adopted amendment to §5.6403(c)(8) requires this performance bond to be in the form prescribed in adopted §5.6408 of this division. A service company qualifying under adopted §5.6402(a)(13) of this division as a third party administrator will, in all cases where the service company is performing claims services, be subject to the performance bond requirements of adopted §5.6403(c)(8) of this division because a third party administrator providing services to or on behalf of a group must always be identified pursuant to adopted §5.6403(c)(12)(A) of this division. On the other hand, an administrator qualifying under adopted §5.6402(a)(13) of this division as a third party administrator is not subject to the additional performance bond requirement of adopted §5.6403(c)(8) of this division. The additional performance bond requirement applicable to service companies providing claims services is a direct result of the Labor Code §407A.057(a), which specifically refers to a service company providing claims services to a group. The Labor Code §407A.057(a) does not prescribe requirements for an administrator providing claims services to a group, so the bond requirements of adopted §5.6403(c)(8) of this division do not apply to administrators providing claims services. The requirements of adopted §5.6403(c)(7) and (8) of this division do apply, however, to each entity that is categorized under adopted §5.6402(a)(12) or (13) of this division as a service company or as a service company that is also a third party administrator. For example, if an entity is categorized under adopted §5.6402(a)(2) of this division as an administrator (Administrator 1) for Group 1, but also performs delegated services for another group (Group 2) that categorize Administrator 1 as a service company under adopted §5.6402(a)(12) of this division for Group 2, Administrator 1 is subject to the bond requirements of adopted §5.6403(c)(6) and (7) of this division. If Administrator 1 also performs delegated claims services for Group 2, Administrator 1 is also subject to the bond requirements of adopted §5.6403(c)(8) of this division because Administrator 1 is categorized as a service company that is also a third party administrator under adopted §5.6402(a)(13) of this division for Group 2. In another example, if an entity qualifies as a service company for Group 1 and as a service company for Group 2, the entity is subject to the bond requirements of adopted §5.6403(c)(7) of this division for both groups. If the same entity retains its categorization as a service company, but also qualifies as a third party administrator for one of the groups, the entity is subject to the bond requirements of adopted §5.6403(c)(8) of this division, as well. The bond requirements of adopted §5.6403(c)(7) and (8) of this division also apply to a delegated entity's downstream subcontractors in the same manner.

Second, the adopted amendment to §5.6403(g) eliminates the dual bonding requirement applicable to those *administrators and service companies* under adopted §5.6402(a)(2) and (12) of this division that also qualify as *administrators* under the Insurance Code Chapter 4151. The Insurance Code §4151.055 requires an administrator, as that term is defined under that chapter, to obtain a fidelity bond. Additionally, the Labor Code §407A.051(c)(12) and (13) requires a group's administrator and service company to also obtain a fidelity bond. As a result, one entity might be subject to the fidelity bond requirements of both the Insurance Code and the Labor Code if that entity is categorized as: (i) an administrator under adopted §5.6402(a)(2) of this division and as an administrator under the Insurance Code §4151.001(1), resulting in that entity being subject to the requirements of both adopted §5.6403(c)(6) of this division and the Insurance Code §4151.055; or (ii) a service company under adopted §5.6402(a)(12) of this division and as an administrator under the Insurance Code §4151.001(1), resulting in that entity being subject to the requirements of adopted §5.6403(c)(7) of this division and the Insurance Code §4151.055. The amount of the fidelity bonds required under the Labor Code §407A.051(c)(12) and (13) will be higher than the amount of a fidelity bond required under the Insurance Code §4151.055 in the majority of circumstances, and the requirements for the content of the fidelity bonds are virtually the same under adopted §5.6403(6) and (7) of this division and the Insurance Code §4151.055. Thus, the interest of the public is not negatively affected by the adopted §5.6403(g) elimination of the duplicative fidelity bond requirement for administrators and service companies, and the benefit to these affected administrators and service companies may be significant.

The remaining adopted amendments and new sections provide additional flexibility for groups and their delegated entities, reduce certain regulatory filing requirements, and provide greater guidance regarding the expectations of the Department with regard to industry compliance with the rules in this division.

HOW THE SECTIONS WILL FUNCTION.

§5.6401. Purpose and Scope. Adopted new §5.6401 defines the purpose and scope of the division, which is to establish the licensing, contracting, reporting, and financial requirements, procedures, responsibilities, and obligations applicable to applicants and workers' compensation self-insurance groups holding a certificate of approval issued under the Labor Code Chapter 407A.

§5.6402. Definitions. Adopted new §5.6402(a) defines the terms used in the rules. Under adopted new §5.6402(b), a group shall engage only one administrator to implement the policies established by the board of trustees and to provide day-to-day management of the group. Also, under new §5.6402(b) a group may engage more than one service company to provide services to the group. Adopted new §5.6402(c) permits an individual, partnership, or corporation to act as an administrator for more than one group. Adopted new §5.6402(d) permits an individual, partnership, or corporation to act as an administrator for one group and as a service company for another group. Adopted new §5.6402(e) prohibits an individual, partnership, or corporation from acting as both an administrator and a service company for the same group at the same time.

§5.6403. Application for Initial Certificate of Approval. The adopted amendment to §5.6403(a) requires an unincorporated association or business trust composed of five or more private employers that proposes to organize as a workers' compensation self-insurance group to file an application for a certificate of approval with the Department. The adopted amendments to §5.6403(c) specifies application requirements that are in addition to the information required under §5.6403(b). The adopted amendment to §5.6403(c)(6) requires an applicant to provide a fidelity bond that meets the requirements of adopted §5.6408 of this division (relating to Fidelity and Performance Bonds) for its administrator in the amount of $250,000. The adopted amendment to §5.6403(c)(7) requires an applicant to provide a fidelity bond that meets the requirements of adopted §5.6408 of this division for each of its service companies

identified pursuant to adopted §5.6403(c)(12)(A) or (B) of this division in the amount of $250,000. The adopted amendment to §5.6403(c)(8) requires an applicant to provide a performance bond for each of its service companies identified pursuant to adopted §5.6403(c)(12)(A) that provide claims service to or on behalf of the group in the amount of $250,000. Further, the adopted amendment to §5.6403(c)(8) makes clear that the performance bond required by adopted §5.6403(c)(8) is in addition to a fidelity bond required by adopted §5.6403(c)(7) of this division for a service company. Additionally, the performance bond required by the adopted amendment to §5.6403(c)(8) must be in the form prescribed by adopted §5.6408 of this division. The adopted amendment to §5.6503(c)(9) provides that an indemnity agreement executed by the members of the group binding (rather than "indemnifying" as stated in the section prior to this adoption) the members, jointly and severally, for the obligations of the group. Section 5.6503(c)(9) continues to require that, at a minimum, the agreement shall include the provisions described in §5.6406 of this division (relating to Indemnity Agreement). The adopted amendment to §5.6403(c)(10) requires an applicant to provide an acknowledgement, in the form prescribed in adopted §5.6407 of this division (relating to Acknowledgement of Indemnity Agreement), executed by each member of the group that it is aware that it can be called upon to pay the workers' compensation claims of another member of the group pursuant to the Labor Code Chapter 407A (rather than "as a result of executing the indemnity agreement in §5.6406 of this title" as stated in the section prior to this adoption). The adopted amendment to §5.6403(c)(11) requires an applicant to provide the statement required by adopted §5.6404 of this division (relating to Notification to the Department and Responsibility for Continued Compliance). The adopted amendment to §5.6403(c)(12) requires an applicant to provide a business plan or plan of operation that describes a group's business activities, safety program, and organization. The plan must include: (i) the identity of the administrator of the group and any third party administrator that provides services to or on behalf of the group; (ii) the identity of any service company that performs one or more of the following services: (a) provides cash and asset management services to a group, including any person that has access to or disbursement authority over any of the group's assets and accounts; (b) maintains the group's accounting records or organizational documents; (c) stores or maintains the group's electronic books and records, including a person identified by a group under §5.6409(b)(3); or (d) provides management of a function for which the group retains ultimate responsibility for under the Insurance Code, the Labor Code, or rules adopted thereunder; (iii) the identity of the accountant and actuary of the group; (iv) a general description of the experience, qualifications, facilities, and personnel of a person identified pursuant to adopted §5.6403(c)(12)(A) or (B); and (v) the identity of the affiliates of a person identified pursuant to adopted §5.6403(c)(12)(A) or (B). Additionally, the adopted amendment to §5.6403(c)(12) permits a group to identify such affiliates in an organizational chart. The adopted amendment to §5.6403(c)(13) requires an applicant to provide a copy of each written agreement required under adopted §5.6411 of this division (relating to Contract Provisions). The adopted amendment to §5.6403(c)(14) requires an applicant to provide a statement that a third party administrator identified pursuant to adopted §5.6403(c)(12)(A) of this division either holds the required authorization from the Department or has applied for the required authorization from the Department and that the group will verify that such authorization has been granted by the Department before the group allows the third party administrator to provide services to or on behalf of the group. The adopted amendment to §5.6403(e) requires each member of the initial board of trustees of a group, subsequent members of the board of trustees of a group, and the executive officers of a person identified pursuant to adopted §5.6403(c)(12)(A) or (B) of this division to provide to the Department a completed biographical affidavit in accordance with §7.1604(b)(1)(C) of this title (relating to Application Denial, Suspension, Cancellation, or Revocation). Further, a biographical affidavit is not required if a biographical affidavit from the individual has been filed with the Department within the prior three years and contains substantially accurate information. A biographical affidavit must demonstrate that the affiant has sufficient experience, ability, standing, and good record to make success of a group probable. The adopted amendment to §5.6403(f) requires each member of the initial board of trustees of a group, subsequent members of the board of trustees of a group, and the executive officers of a person identified pursuant to adopted §5.6403(c)(12)(A) or (B) of this division to comply with the requirements of Chapter 1 Subchapter D of this title (relating to Effect of Criminal Conduct). The adopted amendment to §5.6403(g) permits a person subject to this division and to the requirements of the Insurance Code §4151.055 to satisfy the requirements of §4151.055 by obtaining a fidelity bond that meets the requirements of adopted §5.6403(c)(6) or (7) of this division, as applicable. Finally, the adopted amendment to §5.6403(h) provides that, pursuant to the Labor Code §407A.051(b)(7), the Commissioner may require the submission of any other relevant information reasonably required to determine whether to approve or disapprove an application for a certificate of approval.

§5.6404. Notification to the Department and Responsibility for Continued Compliance. Adopted new §5.6404(a), pursuant to the Labor Code §407A.051(d), requires a group to provide written notice to the Department of any change in the information filed by the group under the Labor Code §407A.051(c) or adopted §5.6403 of this division (relating to Application for Initial Certificate of Approval) or the group's manner of compliance with the Labor Code §407A.051(c) or adopted §5.6403 of this division no later than 30 days after the effective date of the change. Adopted new §5.6404(b) clarifies that a group must meet the requirements of the Labor Code §407A.051(c) and adopted §5.6403 of this division, as those requirements apply to any change of information identified by a group under adopted new §5.6404(a). Adopted new §5.6404(c) requires a group to provide written notice to the Department no later than 10 days of first becoming aware that any hazardous financial condition exists, or that, in the opinion of a group's administrator, that any hazardous financial condition is likely to occur. Adopted new §5.6404(c) also defines a hazardous financial condition to include the conditions described in the Labor Code §407A.355(a) and (b), as well as any event, series of events, or negative trend which may affect the group's ability to continue as a viable group. Adopted new §5.6404(d) requires a group to execute a written statement acknowledging its responsibilities under adopted new §5.6404. Lastly, adopted new §5.6404(e) requires a group to maintain the qualifications necessary to obtain a certificate of approval under the Labor Code Chapter 407A at all times.

§5.6405. Excess Insurance. The adopted amendment to §5.6405(a) requires a group to obtain specific excess insurance for losses that exceed a group's retention in an amount that will pay all benefits required under the Labor Code and rules

adopted thereunder for a compensable claim, unless otherwise approved by the Commissioner. The adopted amendment to §5.6405(c) permits a group to petition the Department to obtain specific excess insurance in an amount that is different than the amount required by adopted §5.6405(a). The adopted amendment to §5.6405(c) also enumerates the factors the Commissioner must consider in determining whether to grant a group's petition, including current market conditions; a group's size, types of employment, years in existence, and risk exposure; other forms, if any, of additional financial security available to the group; and any other relevant factors. Lastly, the adopted amendment to §5.6405(c) prescribes that, in no event, may a group's excess insurance coverage be less than $10 million per occurrence. The adopted amendment to §5.6405(d) requires a group to submit to the Department, at a minimum, an analysis prepared by an actuary of the appropriate level of specific excess insurance for the group to assist the Commissioner in determining whether to grant a group's petition under adopted §5.6405(c).

§5.6408. Fidelity and Performance Bonds. The adopted amendment to §5.6408(a) requires a fidelity bond required of an administrator under the Labor Code §407A.051(c)(12) and §5.6403(c)(6) of this division (relating to Application for Initial Certificate of Approval) and a service company under the Labor Code §407A.051(c)(13) and §5.6403(c)(7) of this division to protect against loss caused directly by an act of fraud or dishonesty by the employees of the administrator or service company. Additionally, the fidelity bond must include the group as a loss payee. The adopted amendment to §5.6408(b) requires a performance bond required under the Labor Code §407A.057 and §5.6403(c)(8) of this division to be in the format prescribed in adopted §5.6408(c). The adopted amendment to §5.6408(c) provides the format and content for a performance bond required under the Labor Code §407A.057 and §5.6403(c)(8) of this division. The adopted amendment to §5.6408(d) prohibits an administrator or service company from obtaining a fidelity bond or performance bond required under adopted §5.6403(c)(6), (7), or (8) of this division from any person except a surety company authorized to engage in business in this state as a surety or an eligible surplus lines insurer in compliance with the Insurance Code Chapter 981 and regulations adopted thereunder. Finally, the adopted amendment to §5.6408(e) requires an administrator or service company to immediately inform the Commissioner and the group, in writing, if a fidelity or performance bond required under adopted §5.6403(c)(6), (7), or (8) of this division is cancelled or terminated, and is not replaced with new coverage that meets the requirements of the Labor Code Chapter 407A and this division and that is effective concurrently upon the date of the cancellation or termination. Further, the adopted amendment to §5.6408(e) provides that the required notification shall not, in any event, be given later than five business days from the date the administrator or service company first becomes aware of the cancellation or termination of the fidelity or performance bond.

§5.6409. Books and Records. Adopted new §5.6409(a) establishes the scope of the adopted new section and clarifies that the adopted new section applies to all books and records of a group, including both written and electronic, regardless of whether those books and records are located within the State of Texas or outside the State of Texas. Adopted new §5.6409(b) permits a group to locate its books and records outside of the State of Texas, provided certain requirements are met. Specifically, in order for a group to locate its books and records outside the State of Texas, adopted new §5.6409(b) requires a group to submit prior written notice to the Department that: (i) provides the specific address outside the State of Texas where the group's books and records will be located; (ii) identifies the types of books and records that will be located outside the State of Texas, including those that will be maintained in an electronic format; (iii) identifies the vendor of a leased or purchased software or electronic platform who will provide services to the group related to the maintenance of the group's books and records, if applicable: and (iv) includes the group's continuity plan in the event of cancellation of termination of the arrangement with a vendor identified by the group pursuant to adopted new §5.6409(b)(3), if applicable. Adopted new §5.6409(c) requires all books and records of a group to be electronically or physically accessible to the Department, upon the Department's request, and to be maintained in a manner that provides an audit trail between the group's general ledger and the group's source documents. Adopted new §5.6409(d) requires a group's electronic books and records to be maintained with reasonable controls to ensure the integrity, accuracy, and reliability of the electronic storage system and to prevent the deterioration of the electronic books and records. Pursuant to adopted new §5.6409(e), a group must ensure a weekly backup of its electronic books and records. Additionally, adopted new §5.6409(f) requires a group to be able to access a complete and current set of its electronic books and records or a complete and current backup of its electronic books and records from a location in the State of Texas at all times. Adopted new §5.6409(g) and (h) provide that adopted new §5.6409 does not in any way limit the Commissioner's authority under the Labor Code §407A.252 and §407A.355, and indicates that, in the event of a conflict between a provision of adopted new §5.6409 and the Labor Code §407A.252 or §407A.355, the provision of the Labor Code §§407A.252 or 407A.355 prevails. Lastly, adopted new §5.6409(i) provides a 30-day grace period from the effective date of adopted new §5.6409 for a group to comply with its provisions, provided that the group holds a certificate of approval issued prior to the effective date of adopted new §5.6409.

§5.6411. Contract Provisions. The adopted amendment to §5.6411(a) requires a group to execute a written agreement with any person identified pursuant to adopted §5.6403(c)(12)(A) or (B) that meets the requirements of adopted §5.6411. The adopted amendment to §5.6411(b) requires a group's delegated entities to execute a written agreement with their downstream subcontractors. The adopted amendment to 5.6411(c) provides that a group retains ultimate accountability and responsibility for compliance with all statutory and regulatory requirements, and no written agreement may be construed to limit, in any way, the group's ultimate accountability and responsibility. The adopted amendment to §5.6411(d) enumerates the minimal provisions that must be included in a written agreement under the adopted section, including: (i) a requirement that the delegated entity or downstream subcontractor must comply with the applicable requirements of the Insurance Code and the Labor Code and rules adopted thereunder, including holding the appropriate license or authorization from the Department; (ii) a requirement that the delegated entity or downstream subcontractor must permit the Commissioner or the group to examine, at any time, its financial solvency and ability to perform its responsibilities under the written agreement; (iii) a description of the duties that the delegated entity or downstream subcontractor is expected to perform and any applicable instructions related to the performance of those services, including references to a group's claims handling practices or procedures; and (iv) a provision relating to the continuity of services, including run-off

fee schedules and the transfer of the books and records of a group from one administrator, service company, or third party administrator to another administrator, service company, or third party administrator. The adopted amendment to §5.6411(e) requires a written agreement entered into between a group and its delegated entity or between a delegated entity and its downstream subcontractor to ensure that the books and records of a group remain the property of the group at all times, are available to the group or its designee at any time while in the custody of a delegated entity or downstream subcontractor, and will be timely transferred to a group or its designee upon request of the group, at the termination or cancellation of the written agreement, and in compliance with all statutes and rules. Finally, the adopted amendment to §5.6411(f) provides that a written agreement required under adopted §5.6411(a) or (b) of this division must meet the requirements of adopted §5.6411 of this division no later than June 1, 2009.

§5.6412. Operational Review Plan. Adopted new §5.6412(a) requires a group to annually adopt an operational review plan that provides for sufficient oversight of any person who is required to enter into a written agreement pursuant to adopted §5.6411(a) or (b) of this division (relating to Contract Provisions), which may be modified at any time to meet a group's needs. Adopted new §5.6412(b) prescribes the minimal requirements for a group's operational review plan. Specifically, adopted new §5.6412(b)(1) requires a group's operational review plan to include the group's estimated projections for the specific information enumerated in adopted new §5.6412(b)(2)(A) - (C) of this division. Adopted new §5.6412(b)(2) requires a group's operational review plan to require any person who is required to enter into a written agreement pursuant to adopted §5.6411(a) or (b) of this division to submit quarterly reports to the group containing the information described in adopted new §5.6412(b)(2)(A) - (C) of this division, which includes projected premium revenue for the current fund year and comparison to premium revenue for the previous fund year, membership counts, and a summary of the performance of the group for each fund year in which the group has been in existence, taking into account the number of claims reported, incurred losses, premium received, loss ratios, expense ratios, and delineations of claims likely to exceed the specific retention and fund years likely to exceed any aggregate retention. Finally, adopted new §5.6412(b)(3) requires a group's operational review plan to provide for corrective action, as determined by the board of trustees of the group, if the performance of the group does not meet its estimated projections required under adopted new §5.6412 of this division. Adopted new §5.6412(c) requires the board of trustees of a group to consider the reports submitted by a group's delegated entities and downstream subcontractors as part of its operational review plan. Additionally, those reports, the board's consideration of those reports, and the board's recommendations for the group based upon those reports must be noted in the minutes of the board of trustees of the group and must be maintained in the books and records of the group.

§5.6413. Membership Cancellation or Termination. Adopted new §5.6413(a) requires a group to notify the Commissioner pursuant to the Labor Code §407A.201(c) only if the group experiences a reduction in membership, caused by either cancellation or termination, resulting in a cumulative reduction of 10 percent or more of its annual written premium, not later than the 10th day after the date on which the cumulative reduction in membership takes effect. Further, adopted new §5.6413(b) requires the group's notification under adopted new §5.6413(a) of this division to include an explanation of the reason for the cancellation or termination of each member of the group and a statement indicating how the group anticipates addressing the membership loss, including whether or not assessments of the remaining members of the group will be necessary.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

§5.6401. Purpose and Scope

Comment: One commenter suggests adding the following language to proposed §5.6401 to ensure that there are no conflicts between the proposed definitions and those contained in the statute: "Chapter 407A, Labor Code, prevails over this division to the extent of a conflict between this division and Chapter 407A." Though the commenter states general support for proposed §5.6401, the commenter states that the proposal deletes the reference to terms defined in the statute and the definitions in the proposal are different from those in the statute.

Agency Response: The Department disagrees with the suggested change. The adopted definitions are consistent with the statutory definitions and other provisions in the Labor Code Chapter 407A and are necessary to effectuate the intent of HB 472.

§5.6402(a)(2). Definition of "Administrator"

Comment: One commenter agrees with equating "administrator" and "managing company" and treating the two terms in the same way. The commenter also agrees with the Department's interpretation that this will effectuate legislative intent.

Agency Response: The Department appreciates the comment.

Comment: Two commenters object to the definition of "administrator," as defined in proposed §5.6402(a)(2). One commenter recommends defining the term "administrator" to mean "a person, partnership, or corporation who, in connection with workers' compensation benefits, collects premiums or contributions from or adjusts or settles claims and provides day-to-day management of the group," as defined in the Labor Code §407A.001(a)(1). Both commenters state that the proposed definition is broad and conflicts with the Insurance Code §4151.001(1). One commenter states that it was not the intention of the Legislature to include in the definition of "administrator" anyone other than the entity that has overall charge of handling a workers' compensation claim and who has the ultimate decision-making authority on behalf of a workers' compensation insurance carrier on a workers' compensation claim. The other commenter states that the definition of the term "administrator" does not follow the very clearly stated definition of the term "administrator" set out in the Insurance Code §4151.001(1) and could lead to confusion about what persons or entities are considered, by law, to be an "administrator."

Agency Response: The Department disagrees that the definition of "administrator" in proposed §5.6402(a)(2) is overly broad or that it conflicts with the Insurance Code §4151.001(1). Therefore, the Department declines to adopt the commenter's suggested definition. The definition in proposed §5.6402(a)(2), which is adopted without changes, appropriately incorporates the definition of the term "administrator," as defined in the Labor Code §407A.001(a)(1). The Labor Code §407A.001(a)(1) contemplates that the administrator of a group will be engaged by the board of trustees of the group to implement its policies and to provide day-to-day management of the group. The Labor Code Chapter 407A does not prohibit a group's administrator from handling a workers' compensation claim and retaining the ultimate decision-making authority on behalf of a group.

However, the Labor Code Chapter 407A also does not define a group's administrator as being limited to that role. Therefore, under the Labor Code Chapter 407A, a group's administrator may provide any service to the group, so long as it has been properly engaged by the group to do so. Pursuant to the Insurance Code §4151.001(1), an administrator under the Insurance Code Chapter 4151 is limited to collecting premiums or contributions or adjusting or settling claims on behalf of residents of this state in connection with annuity benefits, life benefits, accident benefits, health benefits, pharmacy benefits, and workers' compensation benefits. However, the Labor Code §407A.009 makes clear that an administrator or service company under the Labor Code Chapter 407A is subject to the requirements of the Insurance Code Chapter 4151 if the administrator or service company performs the acts of an administrator, as defined in the Insurance Code Chapter 4151. Specifically, the Labor Code §407A.009 provides that an administrator or service company under Chapter 407A that performs the acts of an administrator as defined in Chapter 4151 must hold a certificate of authority under Chapter 4151. The adopted rules are consistent with this statutory scheme.

Comment: A commenter recommends that the term "administrator" be defined as "a person, partnership, or corporation who, in connection with workers' compensation benefits, collects premiums or contributions from or adjusts or settles claims and to provide day-to-day management of the group, as defined in the Labor Code §407A.001(a)(1). Day-to-day management includes claims adjustment; safety engineering; and administration of a claims fund for a self-insured group. For purposes of this division, administrator includes and has the same meaning as managing company, as that term is defined in the Labor Code §407A.001(a)(5-a). Any reference to the term administrator in this division in all contexts necessarily includes and references both administrator and managing company." The commenter further states that the phrase "administration of a claims fund for a self-insured group" should suffice to make the third-party administrator who performs these duties subject to regulation by the Department.

Agency Response: The Department declines to make the recommended change. The definition of "administrator" in the adopted rules is not meant to supplant the definition of "administrator" in §4151.001(1) of the Insurance Code. The term "administrator" is defined to be consistent with the definition of "administrator" in the Labor Code §407A.001(a)(1). Further, the adopted rule requirements related to an "administrator" implement the requirements of the Labor Code Chapter 407A related to an "administrator." Whether a person qualifies as an "administrator" under the Insurance Code Chapter 4151 is determined by applying the definition of that term under Chapter 4151 to the person's activities. If a person holds itself out as or acts as an administrator under Chapter 4151, that person is subject to regulation by the Department as a Chapter 4151 administrator, regardless of whether that person also qualifies as an "administrator" under the Labor Code Chapter 407A or the adopted rules.

Comment: A commenter states that the acts that §5.6402(a)(2) deems to be day-to-day management are often performed as a service to the group by actuarial consultants, certified public accountants, safety consultants, the board of directors of the group, and persons and entities that are exempted under the provisions of the Insurance Code §4151.002 and thus, cannot be defined to be an administrator for the purpose of these rules.

Agency Response: The Department disagrees. The Labor Code §407A.001(a)(1) defines an "administrator" as an individual, partnership, or corporation engaged by the board of trustees of a group to implement the policies established by the board of trustees and to provide day-to-day management of the group. The Labor Code Chapter 407A does not prohibit a group's administrator from performing the activities included in the adopted definition, such as claims adjustment; safety engineering; compilation of statistics and the preparation of premium, loss, and tax reports; preparation of other required self-insurance reports; development of members' assessments and fees; and administration of a claim fund. The Labor Code Chapter 407A also does not define a group's administrator as being limited to any of those activities. Therefore, under the Labor Code Chapter 407A, a group's administrator may provide any service to a group, so long as it has been properly engaged by the group to do so. Whether a person qualifies as an "administrator" under the Insurance Code Chapter 4151 is determined by applying the definition of that term under Chapter 4151 to the person's activities. If a person holds itself out as or acts as an administrator under Chapter 4151, that person is subject to regulation by the Department as a Chapter 4151 administrator, regardless of whether that person also qualifies as an "administrator" under the Labor Code Chapter 407A or the adopted rules. The exemptions contained in the Insurance Code §4151.002 do not apply to an administrator under the Labor Code Chapter 407A. Rather, those exemptions only apply to an "administrator" under the Insurance Code Chapter 4151. Therefore, a person may qualify as an "administrator" under the Labor Code Chapter 407A and as an "administrator" under the Insurance Code Chapter 4151 for performing the same function on behalf of one group, such as claims administration. However, the separate requirements of the Labor Code Chapter 407A and the Insurance Code Chapter 4151 and the rules adopted thereunder will apply to that person independently of one another.

§5.6402(a)(12). Definition of "Service company"

Comment: Three commenters object to the definition of "service company" in proposed §5.6402(a)(12). Two of these commenters disagree with the use of the words "directly or indirectly" in the definition and recommend striking these words. One of these commenters questions whether there is a specific problem that the term "indirectly" is intended to resolve. The commenter states that the qualifier "indirectly" could be taken to an extreme to mean that anyone who provides services indirectly to the group could be considered a service company with all the attendant requirements, such as a treating doctor who provides health care services for injured workers covered by the group. The other of these two commenters objects not only to the use of the words "directly or indirectly," in the proposed definition but also disagrees with the phrases "or on behalf of" and "but not limited to" that are used in the definition. According to this commenter, these phrases are not contained in the statutory definition of "service company." The commenter asserts that these added words could greatly expand the statutory definition. According to this commenter, many different persons provide services directly or indirectly to groups. The commenter states that such persons could include medical bill auditing utilization review companies, case managers, electronic data interchange trading partners, private investigators, forensic engineers, doctors, attorneys, and the phone company and janitorial company for the group. This commenter also states that it does not disagree with the proposed requirements contained in §5.6411 and §5.6412,

but it does disagree with the confusion and potentially excessive burdens on groups and service companies if the definition of "service company" in proposed §5.6402 is not limited to the statutory definition.

Agency Response: The Department does not agree that the words "directly or indirectly" in the definition of "service company" in proposed §5.6402(a)(12) are unnecessary or that the definition is inconsistent with the statutory definition in the Labor Code §407A.001(a)(8) in combination with the other provisions of Chapter 407A. Proposed §5.6402(a)(12), which is adopted without changes, defines "service company" as "a person that directly or indirectly provides services to or on behalf of a group, other than the services provided by an administrator, including, but not limited to: (i) claims adjustment; (ii) safety engineering; (iii) compilation of statistics and the preparation of premium, loss, and tax reports; (iv) preparation of other required self-insurance reports; (v) development of members' assessments and fees; and (vi) administration of a claim fund. The Labor Code §407A.001(a)(8) defines a "service company" as "a person that provides services to the group other than services provided by the managing company, including: (i) claims adjustment; (ii) safety engineering; (iii) compilation of statistics and the preparation of premium, loss, and tax reports; (iv) preparation of other required self-insurance reports; (v) development of members' assessments and fees; and (vi) administration of a claim fund. The definition of "service company" in §5.6402(a)(12) codifies the Department's existing interpretation and application of the definition of "service company" in the Labor Code §407A.001(a)(8) in combination with the other provisions of Chapter 407A. Based on Department experience, when a particular person has provided a service, other than a service provided by a group's administrator, indirectly to or on behalf of a group, including through an agreement or contract with another administrator or service company, the Department has applied the definition of "service company" in the Labor Code §407A.001(a)(8) and any statutory or regulatory requirements concerning "service companies" to that person. For these same reasons, the Department disagrees that the phrases "or on behalf of" and "but not limited to" that are used in the definition are inconsistent with the statutory definition. For these same reasons, the Department also disagrees that the definition of "service company" is confusing or will cause excessive burdens on groups and service companies.

Comment: One commenter suggests deleting the definition of "day-to-day management" referenced in the definition of "administrator" in §5.6402(a)(2) and instead, adding to the definition of "service company" in §5.6402(a)(12) the following phrase: "a person, other than the designated administrator, that. . . ." The commenter alternatively requests a different definition of "day-to-day management" that would lead to more clarity. The commenter states that the additional definition of "day-to-day management," which is defined to include services that are also in the definition of "service company," confuses the management of an administrator with the specific tasks performed by a service company, basically equating the two. The commenter questions whether a person providing loss control or an accountant preparing taxes is an "administrator" because they perform one of these functions.

Agency Response: The Department declines to make the suggested change. Section 5.6402(b) - (e), which are adopted without changes to the proposed text, clarify that a group may engage only one administrator to implement the policies established by the board of trustees and to provide day-to-day management of the group. However, a group may engage more than one service company to provide services to the group. Further, an individual, partnership, or corporation may act as an administrator for more than one group and an individual, partnership, or corporation may act as an administrator for one group and as a service company for another group. However, an individual, partnership, or corporation may not act as both an administrator and a service company for the same group at the same time. The definition of "administrator" in §5.6402(2) is consistent with §5.6402(b) - (e). Adopted §5.6402(2) clarifies that an individual, partnership, or corporation that is engaged by the board of trustees to implement the policies established by the board of trustees of the group and to provide day-to-day management of the group may, in its role as the group's administrator, perform any function delegated to it by the group, including claims adjustment; safety engineering; compilation of statistics and the preparation of premium, loss, and tax reports; preparation of other required self-insurance reports; development of members' assessments and fees; and administration of a claim fund. Whether a person is categorized under adopted §5.6402 as an administrator depends upon whether the person has been engaged by the board of trustees to implement the policies established by the board of trustees and to provide day-to-day management of the group.

Comment: Three commenters object to the broadness of the definition of "service company" in proposed §5.6402(a)(12). One commenter suggests modifying the rule to eliminate the possibility that the broadly worded definition of "service company" as proposed, might encompass firms and individuals who provide legal, accounting, or other services that are not typically subject to insurance regulation. A second commenter states that while the commenter has no problem with the requirements that a service company provide a performance bond and a fidelity bond with respect to the entities specified in the statutory definition, the definition of "service company" includes many persons who may not even suspect that the definition and resulting bonding requirements apply to them. The commenter states that because §5.6404 requires information to be updated within 30 days of any change in the information contained in the group's application for initial certificate of approval, it is crucial for groups and persons who may be considered service companies to know when the information must be updated, to what extent, and whether a fidelity and performance bond will be required. A third commenter requests that some other limitation related to service companies be applied in the rule, such as limiting requirements to service companies that perform management and payment of claims or collection of premiums.

Agency Response: While the Department agrees with the commenters, the Department does not agree that the proposed definition of "service company" in §5.6402(a)(12) should be changed. The Department, however, has addressed these concerns by revising proposed §5.6403(c)(12)(B) in the adoption to provide that the notification requirements of §5.6404 as adopted, the bond requirements of §5.6403(c)(7) and (8) as adopted, the contracting requirements of §5.6411 as adopted, and the reporting requirements of §5.6412 as adopted, apply to a group's service companies that perform one or more of the following services: (i) provides cash and asset management services to a group, including any person that has access to or disbursement authority over any of the group's assets and accounts; (ii) maintains the group's accounting records or organizational documents; (iii) stores or maintains the group's electronic books and records, including a person identified by

a group under §5.6409(b)(3); (iv) provides management of a function for which the group retains ultimate responsibility for under the Insurance Code, the Labor Code, or rules adopted thereunder. Revised §5.6403(c)(12)(B) as adopted, in conjunction with adopted §§5.6403(c)(7), (8), (12)(A), and (13), 5.6404, 5.6408, 5.6411, and 5.6412, provide that the notification, bonding, contracting, and reporting requirements also apply to a group's service companies that are third party administrators.

Comment: One commenter requests that proposed §5.6402(a)(12) defining a "service company" be amended to clarify that a person or entity exempted from the provisions of the Insurance Code Chapter 4151 by §4151.002 are not included in the definition. The commenter objects to the definition because it attempts to include persons and entities that are specifically exempted from the provisions of Chapter 4151 by the Insurance Code §4151.002. According to the commenter, the term is not mandated by or set out in the Insurance Code Chapter 4151. The commenter states that the definition of the term "service company" is overly broad and, if adopted as proposed, will result in a conflict between the rule and the Insurance Code §4151.002 by including persons and entities that are specifically exempted from the provisions of Chapter 4151. The commenter states that the proposed subsection does not meet the fair, reasonable, and appropriate standards required by HB 472 for the rules to augment and implement the Insurance Code Chapter 4151 in that the definition of the term "service company" appears to attempt to include persons and entities that are specifically exempted from the provisions of Chapter 4151 by §4151.002.

Agency Response: The Department disagrees that there is a conflict between the definition of "service company" in proposed §5.6402(a)(12), which is adopted without changes, and the exemptions enumerated in the Insurance Code §4151.002. The Department agrees that the term "service company" is not defined in the Insurance Code Chapter 4151. The exemptions enumerated in the Insurance Code §4151.002, however, only apply to an "administrator" under the Insurance Code Chapter 4151. Those exemptions do not apply to an "administrator" or a "service company" under the Labor Code Chapter 407A. A person may perform a function on behalf of a group that qualifies them as (i) an "administrator" under the Labor Code Chapter 407A, (ii) a "service company" under the Labor Code Chapter 407A, (iii) an "administrator" under the Insurance Code Chapter 4151, or (iv) an "administrator" or "service company" under the Labor Code Chapter 407A and an "administrator" under the Insurance Code Chapter 4151. However, regardless of the characterization of a person under the Labor Code Chapter 407A or the Insurance Code Chapter 4151, the requirements of those chapters and the rules adopted under those chapters will be applied to the person independently of one another. For example, a person that qualifies as a "service company" under the Labor Code Chapter 407A will be subject to the requirements of that chapter and any rules adopted thereunder, as they relate to service companies. If that same person also qualifies as an "administrator" under the Insurance Code Chapter 4151, the requirements of that chapter, including any applicable exemptions, and any rules adopted under that chapter will also apply to that person, regardless of the application of the Labor Code Chapter 407A and rule requirements to that same person also operating as a service company.

§5.6402(a)(13). Definition of "Third party administrator"

Comment: One commenter requests that the definition of "third party administrator" in proposed §5.6402(a)(13) either be amended to repeat the definition set out in the Insurance Code §4151.001(1) or be deleted in its entirety.

The reasons specified by the commenter are: (i) the definition of the term "third party administrator" is overly broad; (ii) it does not follow the definition of the term "administrator" as defined by the Insurance Code §4151.001(1); (iii) the inclusion of the phrase "or service company, as those terms are defined under this division, that holds itself out or acts as an administrator" appears to be an attempt to expand the statutory definition of the term "administrator" by rule-making; (iv) state agencies do not have the authority to modify or expand the definition of a term set out in a statute via rule-making in an attempt to expand the meaning of a term; and (v) the rule and its associated definitions of terms must mirror the statute's definition of the term.

Agency Response: The Department declines to make the requested change. The Department disagrees that the definition of "third party administrator" in the adopted rules is overly broad or conflicts with the definition of "administrator" in the Insurance Code Chapter 4151 in combination with the requirements of both the Labor Code §407A.009(a) and the Insurance Code §4151.001(1) and §4151.001(3). The Labor Code §407A.009(a) requires an administrator or service company under the Labor Code Chapter 407A that performs the acts of an administrator as that term is defined in the Insurance Code Chapter 4151 to hold a certificate of authority under the Insurance Code Chapter 4151. Further, the Insurance Code Chapter 4151 defines an "administrator" as "a person who, in connection with annuities or life benefits, health benefits, accident benefits, pharmacy benefits, or workers' compensation benefits, collects premiums or contributions from or adjusts or settles claims for residents of this state. The term includes a delegated entity under Chapter 1272 and a workers' compensation health care network authorized under Chapter 1305 that administers a workers' compensation claim for an insurer, including an insurer that establishes or contracts with the network to provide health care services. The term does not include a person described by §4151.002. The Insurance Code Chapter 4151 defines a "person" in §4151.001(3) as "an individual, partnership, corporation, organization, government or governmental subdivision or agency, business trust, estate trust, association, or any other legal entity." Neither the Labor Code Chapter 407A nor the Insurance Code Chapter 4151 exempt a "service company," as that term is defined in the Labor Code Chapter 407A from being required to hold a certificate of authority under the Insurance Code Chapter 4151 if the service company is holding itself out as or acting as an administrator, as that term is defined under the Insurance Code Chapter 4151. The Insurance Code §4151.002 does enumerate several exemptions from the requirements of the Insurance Code Chapter 4151. However, those exemptions must be applied on a case-by-case basis to each person qualifying as an "administrator" under the Insurance Code Chapter 4151. A person who qualifies as a "service company" under the Labor Code Chapter 407A is not automatically exempted from the requirements of Chapter 4151 because that person is a "service company" under the Labor Code Chapter 407A. Neither is a person who qualifies as an "administrator" under the Insurance Code Chapter 4151 automatically exempted from the requirements of that chapter because the person also qualifies as a "service company" under the Labor Code Chapter 407A.

§5.6402(a). Additional definitions requested

Comment: Two commenters recommend including in the rules a definition of the term "claims adjustment." One of the com-

menters also recommends that the rules define the term "settles claims" and "adjusts." The other commenter states that the rule defines the term "service company" as a person that directly or indirectly provides services to or on behalf of a group, other than the services provided by an administrator, including, but not limited to claims adjustment. The commenter states that the rule, however, does not define the term "claims adjustment," which is one of the most important aspects of the duties performed by a third-party administrator. The commenter recommends that the proposed rule include a definition of the term "claims adjusting" and suggests that "claims adjusting" be defined as "the investigation and management of a workers' compensation claim, settling of disputed claims issues, and determining the appropriate amount and duration of workers' compensation benefits provided for under the Labor Code Title 5 by a licensed third-party administrator."

Agency Response: The Department does not believe that it is necessary to define these terms and that to do so, could result in unnecessary ambiguity. The Insurance Code Chapters 4101 and 4102 address adjusters and adjusting and prescribe the requirements applicable to obtaining an adjuster's license. The Department declines to adopt a more narrow definition of "claims adjusting" than may be contemplated by these chapters. Any definition of "claims adjusting" in the adopted sections may have an unanticipated effect upon the application of the term "adjuster" in these chapters or the interpretation of the term "claims adjuster" in other Code provisions or Department rules.

§5.6402(e). Prohibition on acting as both an administrator and a service company for the same group at the same time

Comment: One commenter objects to proposed §5.6402(e) and suggests that it be changed as follows: "An individual, partnership, or corporation may not [act as] be categorized as but may perform the functions of both an administrator and a service company for the same group at the same time." The commenter states that this subsection is supposed to clarify that a person will not be categorized as both an administrator and a service company, but that one person can do both functions. The commenter suggests that this intent would be better served by the commenter's recommended language.

Agency Response: The Department declines to make this change. The Department does not agree that one person can perform functions as both an administrator and service company for one group at the same time. An administrator is not prohibited under the Labor Code Chapter 407A or the adopted rule from performing any function delegated to it by the group. An administrator is engaged by the board of trustees to implement the policies adopted by the board of trustees and to provide day-to-day management of the group. Day-to-day management may include any delegated function. Any function that is not delegated to the administrator by the group may be performed by a service company. A person is categorized as an administrator or a service company under the adopted sections based on the functions they perform and in the capacity in which they perform them. If a person is engaged by the board of trustees to implement its policies and provide it with day-to-day management, it is categorized as the group's administrator, regardless of the specific functions it then performs. However, a person cannot be a service company for a group unless the group has delegated to it a function that is not being performed by the group's administrator.

§5.6403. Application for Initial Certificate of Approval

Comment: Two commenters objected to the broad and unclear language in proposed §5.6403(c)(12)(B). The commenters request that the language in proposed §5.6403(c)(12)(B) be clarified to apply to service companies with ultimate authority over payment of claims or that handle member contributions or distributions and with access to the group's accounts.

One of the commenters states that this limitation is consistent with the distinction that the Labor Code §407A.057 makes between any service company and a service company "providing claim services." The two commenters object to the qualifier "any service company that has management or discretionary decision making authority." The commenters assert that proposed §5.6403(c)(12)(B) does not clearly delineate which service companies must be included in the plan of operation. The commenters state that this also affects what notifications of changes in the information must be provided to the Department over time. The commenters state that many people who provide services to a group have some discretion and that discretion may affect the adjustment of claims, but they do not have the ultimate authority over payment of the claim. An example, according to one of the commenters, is an attorney at a benefit review conference who has discretion over whether to make an agreement regarding disputed issues. The commenter questions, however, whether the group will have to include the identity of the attorneys it will use and notify the Department every time that a new attorney is used. The two commenters state that §5.6403(c)(12)(B) determines not only who must be included in a group's original business plan, but also which entities must have an individual written contract under proposed §5.6411. According to the commenters, the proposed language in §5.6403(c)(12)(B) is not clear and may result in noncompliance and arguments at examination as to which entities have "management or discretionary decision making authority." The commenters also state that these requirements will require a group to focus too much on administrative requirements rather than the payment of claims.

Agency Response: The Department agrees with these two commenters regarding the need to clarify the language in §5.6403(c)(12)(B). The Department has revised §5.6403(c)(12)(B) as adopted so that the notification, bonding, contracting, and reporting requirements of the adopted rules apply to a group's service companies that perform one or more of the following services: (i) provide cash and asset management services to a group, including any person that has access to or disbursement authority over any of the group's assets and accounts; (ii) maintain the group's accounting records or organizational documents; (iii) store or maintain the group's electronic books and records, including a person identified by a group under §5.6409(b)(3); or (iv) provide management of a function for which the group retains ultimate responsibility for under the Insurance Code, the Labor Code, or rules adopted thereunder. Adopted §5.6403(c)(12)(A) and (B), in conjunction with adopted §§5.6403(c)(7), (8), and (13), 5.6404, 5.6408, 5.6411, and 5.6412, provide that the notification, bonding, contracting, and reporting requirements also apply to a group's service companies that are third party administrators.

§5.6403(c)(12)(D). Application for Initial Certificate of Approval: Requirements to submit a general description of the experience, qualifications, facilities, and personnel

Comment: Four commenters object to proposed §5.6403(c)(12)(D) concerning the requirement that an applicant for an initial certificate of approval provide a general description of the experience, qualifications, facilities, and personnel of

a person identified pursuant to §5.6403(c)(A) or (B). One of these commenters objects to the §5.6403(c)(12) because it appears to require an applicant for a certificate of approval to include in its business plan or plan of operation a list of all employees, and pursuant to proposed §5.6404(a), to require a group to provide written notice to the Department identifying any change in the information filed under this subsection with the application for an initial certificate of approval. The commenter's reasons are the following: (i) the requirements are unrealistic and overly burdensome; and (ii) the requirements do not comply with the fair, reasonable, and appropriate standards required by HB 472 for the rules which are to augment and implement the Insurance Code Chapter 4151. The commenter states that the requirement to include a list of personnel will result in the Department being inundated with notices as employees leave for other employment or other reasons or retire. The commenter states that this requirement places an unnecessary burden upon the group, administrator of the group, TPA, service company, and other various persons and entities. The commenter requests that proposed §5.6403(c)(12)(D) be amended to only require the group to include the names of the principal officers of the group, administrator of the group, third party administrator, as well as a general description of the experience, qualifications, and facilities of the group and third party administrator in its business plan or plan of operation, as an alternative to requiring a list of all employees of these entities. This commenter requests that the rule be amended to require the applicant to include a list of service companies and other persons or entities that provide technical or consultative services to the group in lieu of requiring a list of the personnel of these persons and entities. The commenter also recommends, as an alternative to requiring the business plan to include a list of all employees and to assist the Department in its auditing and enforcement activities or compliant review processes, that the rule be amended to allow Department staff to request a list of service companies and other persons or entities that provide technical or consultative services to the group or third party administrator on an as needed basis after approval of the application for a certificate of authority for the group. A second commenter states that the requirement in §5.6403(c)(12)(D) of a "general description" is unclear. The commenter states that "general description" gives no guidance on how extensive the description must be. Two other commenters support requiring an explanation of the experience and qualifications for the contractors subject to their other comments about clearly delineating which contractors are subject to these requirements. Additionally, these two commenters ask what description of personnel is contemplated in proposed §5.6403(c)(12)(D). These two commenters question whether the group would need to notify the Department of changes in the individual adjusters of an adjusting firm and other personnel. One of the commenters suggests this requirement be clarified as to what level of detail is required.

Agency Response: The Department declines to make any change. Section 5.6403(c)(12)(D) as adopted does not require a group to include a list of all the employees of its delegated entities in its business plan or plan of operation. Section 5.6403(c)(12)(D) as adopted requires a group to include in its business plan or plan of operation a general description of the experience, qualifications, facilities, and personnel of its delegated entities. Its delegated entities include its administrator, third party administrator, if any, and service companies, if any, that perform one or more of the following services: (i) provide cash and asset management services to a group, including any person that has access to or disbursement authority over any of the group's assets and accounts; (ii) maintain the group's accounting records or organizational documents; (iii) store or maintain the group's electronic books and records, including a person identified by a group under §5.6409(b)(3); or (iv) provide management of a function for which the group retains ultimate responsibility for under the Insurance Code, the Labor Code, or rules adopted thereunder. The required general description does not need to include a list of each individual staff member of a group's particular delegated entity. Rather, the description should include the key personnel of a group's delegated entity, such as its executive staff, officers, directors, or key managers. The description should also include a broad overview of the experience and qualifications of the delegated entity. This description should be general. The description does not need to include a summary of the experience and qualifications of each individual staff member of a particular entity. Rather, the description should include a general statement of the experience and qualifications of the entity's key personnel and the experience and qualifications of the entity itself. Thus, for example, notices would not have to be filed with the Department for changes in individuals who are licensed, front-line adjusters of an adjusting firm. The Department also disagrees that the requirements of §5.6403(c)(12)(D) will be overly burdensome or unrealistic because the disclosure relates to key personnel, such as executive staff, officers, directors, or key managers, rather than all personnel, and because the number and types of delegated entities subject to disclosure in the group's business plan have been narrowed as a result of changes made to §5.6403(c)(12)(B) and (C). The Department also disagrees that the requirements of §5.6403(c)(12)(D) will be burdensome or unrealistic in conjunction with the notice requirements of §5.6404 as adopted. Section 5.6404 as adopted requires a group to notify the Department: (i) of any change in the information originally filed in the group's application for a certificate of approval, (ii) if a group retains a new delegated entity after the time of its original application and filing; and (iii) of any change in the group's manner of compliance with the Labor Code §407A.051(c) and §5.6403 as adopted. An example is: If a group identified its administrator's executive officers at the time of its original application pursuant to §5.6403(c)(12)(D) and if one of the administrator's officers resigned and a new officer was hired by the administrator as a replacement, a group would be required to notify the Department of that change pursuant to adopted §5.6404. However, if the administrator's staff member resigned, a group would not be required to notify the Department of that change under adopted §5.6404 because it did not affect one of the key personnel of the administrator. The Labor Code §407A.051(d) requires a group to notify the Commissioner of any change in (i) the information required to be filed under the Labor Code §407A.051(c) or the manner of the group's compliance with the Labor Code §407A.051(c). Section 5.6403(c)(12)(D) and §5.6404 as adopted are consistent with these statutory requirements.

§5.6403(e). Application for Initial Certificate of Approval: Biographical affidavit

Comment: One commenter suggests using a term other than "substantially accurate" with regard to the fitness of a particular affiant to participate in running a workers' compensation self insurance group. The commenter questions the use of the term "substantially accurate" and states that someone with absolutely no qualifications to run a group could submit a substantially accurate (truthful) affidavit. According to the commenter, the term

should better capture the willingness of the Department to rely on older biographical affidavits when those affidavits demonstrate what the Department deems to be a high degree of fitness.

Agency Response: The Department declines to make the suggested change. The Department believes that the term "substantially accurate" is the proper term because it refers to situations where the Department may elect to rely on a biographical affidavit that is already on file with the Department and a new biographical affidavit is not required. Section §5.6403(e) as adopted provides that a new biographical affidavit is not required to be filed with an application for a certificate of approval if a biographical affidavit has been filed with the Department within the three prior years and contains substantially accurate information. A biographical affidavit on file with the Department will not qualify under §5.6403(e) if it fails to contain substantially accurate information; a new biographical affidavit will be required to be filed under §5.6403(e). Whether an existing biographical affidavit on file contains substantially accurate information, and whether the biographical affidavit reflects that a person is fit to run a group are two different issues. The Department will review each of these biographical affidavits to ensure not only that the originally submitted information remains accurate, but that the originally submitted information indicates sufficient experience, ability, standing, and good record to make success of the particular group in question probable. While a biographical affidavit already on file with the Department may continue to contain truthful information, the Department will not accept it without further reviewing it to ensure that the person is qualified to be involved with the particular group in question. Thus, the Department does not agree that someone with absolutely no qualifications to run a group could submit a substantially accurate (truthful) affidavit that will be acceptable to the Department because the Department will also require that such biographical affidavit reflect that the person have the sufficient experience, ability, standing, and good record to successfully operate the group.

Comment: One commenter suggests specifying what form of affidavit must be used.

Agency Response: The form of the affidavit is adopted by reference pursuant to §7.1604(b)(1)(C). Proposed §5.6403(e) has been revised in this adoption to specify that the biographical affidavit must be completed in accordance with §7.1604(b)(1)(C).

§5.6403(h). Application for Initial Certificate of Approval: Other relevant information

Comment: A commenter requests that the statutory reasonableness requirement in the Labor Code §407A.051(b)(7) be inserted in proposed §5.6403(h) to reflect the Legislature's intent that such requests for information are subject to certain limits.

Agency Response: The Department agrees and adopted §5.6403(h) reads: "Pursuant to the Labor Code §407A.051(b)(7), the commissioner may require the submission of any other relevant information reasonably required to determine whether to approve or disapprove an application for a certificate of approval."

§5.6404. Notification to the Department and Responsibility for Continued Compliance.

Comment: Two commenters object to the written notice of change requirement in proposed §5.6404(a) and recommend changes in the proposed requirements. These two commenters specifically object to the requirement to provide notice when there are personnel changes and requests that the requirement be revised to eliminate this requirement. According to one commenter, this requirement appears to include any changes in personnel of the group, administrator of the group, third party administrator, service company, and persons and entities that provide various services to the group or its third party administrator. The commenter states that such a requirement is overly burdensome and does not comply with the fair, reasonable, and appropriate standards required by HB 472 for the rules to augment and implement the Insurance Code Chapter 4151. According to this commenter, this is a very unrealistic and unreasonable rule requirement. This commenter also states that the requirement in §5.6404(a) to include a list of personnel will result in the Department being inundated with notices as employees leave for other employment or other reasons or retire. The commenter states that this requirement places an unnecessary burden upon the group, administrator of the group, third party administrator, service company, and other various persons and entities that provide services to a group or its third party administrator. The second commenter recommends qualifying the §5.6404 notification requirement by requiring a group to notify the Department of material changes to the information provided. According to the commenter, this would balance getting relevant information that could alert the Department to potential problems with the group and not add unnecessary burden on a group or the Department. According to the commenter, §5.6404(a) and (b) generally reflect the statutory language, but the broad nature of these requirements may be a substantial burden on both the Department and the group without providing the Department useful information in terms of potential problems with a group. The commenter states that the Department could be inundated with notices of inconsequential changes in this information, raising the concern that important changes could get lost. The commenter further states that, if the group fails to send in any and all information, regardless of its impact on the administration or solvency of a group, the group could be penalized for the failure to report that information. The commenter states that, as a group matures and gets further away in time from its initial application, these subsections will require almost constant reporting to the Department, producing unnecessary work for the group and useless information that the Department must review. The commenter states that the goal of early warning signs of potential problems with a group would be better served if the rule required substantive information, such as membership losses and gains, classification codes written, or loss ratios to be provided to the Department on a regular basis rather than requiring the group to constantly monitor the information provided in the original application to see if any detail has changed.

Agency Response: The Department declines to make any of the requested changes. The Department disagrees that the requirement that the §5.6404 notice include changes in the list of the employees filed pursuant to §5.6403 is unreasonable and that the requirement does not comply with the fair, reasonable, and appropriate standards required by HB 472 for the rules to augment and implement the Insurance Code Chapter 4151. Section 5.6404 as adopted without changes to the proposal is consistent with the statutory requirements in Labor Code §407A.051(c) and (d). Section 5.6404(a) requires a group to notify the Department: (i) of any change in the information originally filed in the group's application for a certificate of authority, (ii) if a group retains a new delegated entity after the time of its original application and filing; and (iii) of any change in the group's manner of compliance with the Labor Code §407A.051(c) and §5.6403 as adopted. The Labor Code §407A.051(d) requires a

group to notify the Commissioner of any change in (i) the information required to be filed under the Labor Code §407A.051(c) or (ii) the manner of the group's compliance with the Labor Code §407A.051(c). The notification requirements serve the purpose of informing the Department when changes have occurred to a group's operations, business model, or financial condition and health. The notification process allows the Department to monitor a group's compliance with the requirements of the Labor Code §407A.051(c) and to identify potentially hazardous conditions to a group before an insolvency becomes imminent, at which time it may be too late for the Department to effectively take proactive and corrective action to protect the interests of the public. Further, revised §5.6403(c)(12)(B) as adopted, in conjunction with §5.6403(c)(12)(A), clarify which of a group's service companies are subject to the notification requirements in §5.6404, the bonding requirements in §5.6403(c)(7), (8) and §5.6408, the contracting requirements in §5.6411, and the reporting requirements in §5.6412. The Department anticipates that §5.6403(c)(12)(B) as adopted could reduce certain regulatory filing requirements under §5.6404(a) and (b).

Comment: One commenter requests that §5.6404(c) reference only subsection (a) of §407A.355 of the Labor Code. This commenter also requests that the Department determine specific key pieces of information that reflect potential financial problems and require those to be reported. The commenter states that the real substance of this subsection is to gather early warnings of potential problems that would affect solvency, which is defined in subsection (a) of §407A.355. The commenter states that subsection (b) of §407A.355 provides what steps should be taken if those conditions arise. The commenter states that, while the commenter agrees with the purpose of proposed §5.6404(c), which is to get an early warning of potential financial problems, the language is vague and may not provide information that would serve that purpose. The commenter states that too much information may be provided, running the risk of important information getting lost in the midst of irrelevant information. The commenter states that the kind of information required to be reported under this subsection should be specific and relevant to solvency issues. Additionally, the commenter states that the proposed language that the group report "any event, series of events, or negative trend that may affect the group's ability to continue as a viable group" does not provide adequate guidance to a group as to its responsibilities and could result in arguments during an examination as to whether a specific set of events was a "negative trend".

Agency Response: The Department declines to make the suggested changes. The Department agrees that §5.6404(c) should only reference information related to early warnings of potential problems that could affect solvency. However, the Department's position is that §5.6404(c) as adopted achieves this objective. Making the changes requested by the commenter would have the effect of limiting the early warning information that would be required to be reported to the Department under §5.6404(c), thus limiting the intended usefulness of the reporting requirement. In addition to the enumerated factors in the Labor Code §407A.355(a), the Department believes that the Labor Code §407A.355(b) provides significant guidance in determining early warning signs of a group's potential financial problems. The Labor Code §407A.355(b) states: "[i]f the assets of a group are at any time insufficient to enable the group to discharge its legal liabilities and other obligations and to maintain the reserves required under this chapter." Also, the Department considers the early warning factors enumerated in the Labor Code §407A.355(a) and (b) and any event, series of events, or negative trend that may affect the group's ability to continue as a viable group to be sufficient information that will reflect any potential financial problems of a group. It is not possible or feasible to determine specific key pieces of information that reflect potential financial problems because the factors and circumstances that can determine whether a group is viable or not are wide-ranging and broad. The notification process allows the Department to monitor a group's compliance with the requirements of the Labor Code §407A.051(c) and to identify potentially hazardous conditions to a group before an insolvency becomes imminent, at which time it may be too late for the Department to effectively take proactive and corrective action to protect the interests of the public.

Comment: One commenter recommends that proposed §5.6404(e) be deleted because revocation is provided for in the statute and this does not add to protection of solvency. The commenter asks what will happen if a group does not maintain "the qualifications necessary to obtain a certificate of approval." The commenter asks if this will result in the revocation of the group's certificate. The commenter states that the Labor Code §407A.404 provides for the revocation of a certificate of approval and that compliance with all of the initial qualifications is not enumerated in that section. The commenter states that, under the rule as proposed, some of the initial qualifications could close down an otherwise viable group. The commenter provides the following example. To be certified initially, the net worth of the initial members must be at least $2 million. Once a group is established, the relevant financial marker is the assets of the group, not the net worth of its members. The group could have $5 million in assets with only $2 million in ultimate liabilities but be forced to shut down if at any given time the net worth of its members falls below $2 million. The commenter states that this does not add value to the oversight or solvency of a group.

Agency Response: The Department declines to make the recommended change. The Department disagrees that §5.6404(e) as adopted does not add value to the oversight or solvency of a group. Section 5.6404(e) as adopted requires a group that obtains a certificate of approval to maintain the qualifications that were necessary to obtain the initial certificate of approval issued under the Labor Code Chapter 407A at all times. Section 5.6404(e) clarifies that a group that is issued a certificate of approval based upon meeting the qualifications necessary to obtain a certificate of approval cannot cease to meet those qualifications after the certificate of approval is issued. The Labor Code §407A.051(d)(2) provides that not later than the 30th day after the effective date of the change, a group shall notify the commissioner of any change in: (i) the information required to be filed under Subsection (c); or (ii) the manner of the group's compliance with subsection (c). Additionally, under the Labor Code §407A.404, the Commissioner may revoke a group's certificate of approval if, after notice an opportunity for a hearing, the group: (i) is found to be insolvent; (ii) fails to pay a tax, assessment, or special fund contribution imposed on the group; or (iii) fails to comply in a timely manner with Chapter 407A, a rule adopted under Chapter 407A, or an order of the Commissioner. After notice and the opportunity for a hearing, the Commissioner also may take action to impose a fine against a group, pursuant to the Labor Code §407A.402, or to issue an order requiring a group to cease and desist from engaging in any act or practice found to be in violation of Chapter 407A or a rule adopted under Chapter 407A, pursuant to the Labor Code §407A.403. Additionally, if the Commissioner determines that the group is in a hazardous

financial condition, the Commissioner also may take any action as provided by the Labor Code §407A.355 and the Insurance Code Chapter 441. The Commissioner has the discretion to determine what, if any, action to take against a group that violates Chapter 407A or a rule adopted thereunder. Thus, if a group fails to comply in a timely manner with Chapter 407A, including maintaining the qualifications necessary to obtain a certificate of approval issued under Chapter 407A, the Commissioner has the authority and discretion to take regulatory action under the Labor Code Chapter 407A, including, but not limited to imposition of penalties.

Comment: A commenter requests that proposed §5.6404(e) be withdrawn. The commenter states that there is nothing wrong with the proposed rule as written; it seems to call only for a group to continue to have the qualifications it had when it obtains its certificate of approval. However, the commenter questions whether the rule is being promulgated in an attempt to formalize a misguided interpretation of the statute. Specifically, the commenter refers to the Labor Code's security requirement in connection with a group's initial application in the Labor Code §407A.053. The commenter states that there is nothing in the statute that requires a group periodically to adjust its security amount either up or down. The commenter states that if the Legislature had wanted to require changes in the statutory deposit for groups depending upon changes in the liabilities of the group, it could have made such changes a pre-condition to renewal, as it did with excess insurance requirements. The commenter also states that the Legislature could have specified a certain deposit level for the commencement of operations with different levels required in future years, as it did with premium requirements. The commenter further states that because the Legislature did not do either of these things, adjustments are not required. The commenter states that if the Department has not expressly or impliedly been given the power to require adjustments of the deposit, it cannot do so.

Agency Response: The Department disagrees with the commenter's interpretation of proposed §5.6404(e) and the Labor Code Chapter 407A and declines to withdraw proposed §5.6404(e). The Labor Code 407A.053(c) requires a group to post security in the form and amount prescribed by the Commissioner, equal to the greater of $300,000 or 25 percent of the group's total incurred liabilities for workers' compensation. The Labor Code §407A.053 contemplates that the amount of a group's security is risk-based, since an amount equal to 25 percent of the group's total incurred liabilities for workers' compensation will change in proportion with changes in these liabilities, and must be adjusted upward as a group's liabilities increase. The Labor Code §407A.051(c)(2) provides that one of the requirements for a group to be qualified and issued a certificate of approval is proof of compliance with the financial requirements under the Insurance Code §407A.053. Under the Labor Code §407A.051(d), a group is required to notify the Commissioner of any change in (i) the information required to be filed under the Labor Code §407A.051(c) or (ii) the manner of the group's compliance with the Labor Code §407A.051(c). Thus, a group is required to continue to meet the security requirements specified in the Labor Code §407A.053, including increasing the deposit to match the current amount of TCT's current workers' compensation-related liabilities. Section 5.6404(e) is consistent with these statutory requirements. Further, at the point of initial licensure, a group always has zero incurred liabilities for workers' compensation. Thus, the amount of the group's security at initial licensure would never be greater than $300,000. If the security can never be adjusted upward after licensure, it renders the Labor Code §407A.053(c) meaningless. Section 407A.053(c) contemplates that the group's security could be "greater" than $300,000 based upon 25 percent of the group's total incurred liabilities for workers' compensation.

§5.6408(a). Fidelity and Performance Bonds

Comment: A commenter objects to proposed §5.6408(a) because it does not provide that the required fidelity bond protect against loss caused directly by an act of fraud or dishonesty by the administrator's or service company's employees and does not provide that the bond include the group as a loss payee. The commenter recommends that proposed §5.6408(a) be changed as follows: "Fidelity bonds required of an administrator under the Labor Code §407A.051(c)(12) and a service company under the Labor Code §407A.051(c)(13) must protect against loss caused directly by an act of fraud or dishonesty by *the employees of the administrator or service company, and such fidelity bond shall include the group as a loss payee* [in exercising its powers and duties as an administrator or service company and shall be made payable to the group]." According to the commenter, the coverage specified in the proposal is likely not available because it exceeds the type of risks that can effectively be underwritten and covered by a fidelity bond. The commenter states that a fidelity bond does not provide coverage for losses caused by the dishonesty of the business itself or the dishonesty of those that control the business. According to the commenter, a fidelity bond is primarily for the benefit of the named insured, the administrator, or service company, and protects the named insured against loss incurred by the insured. The commenter states that a workers' compensation self insurance group is protected indirectly in the sense that if an employee of an administrator or service company stole funds, the group could make a claim and use the proceeds of the claim to reimburse the group. By requiring the fidelity bond to be "payable to the group," the proceeds of the claim could be paid to the group under a "loss payee" rider.

Agency Response: The Department agrees with the requested change and §5.6408(a) as adopted has been changed accordingly. Also, references to the fidelity bond requirements of §5.6403(c)(6) and (7) have been added to §5.6408(a) as adopted.

§5.6408(e). Fidelity and Performance Bonds

Comment: One commenter requests clarification on what happens after an administrator or service company reports to the Department and the group that it has lost its fidelity bond. The commenter questions if the administrator or service company must be suspended or if the group must find a new administrator.

Agency Response: The rules do not specifically address what must occur after an administrator or service company reports to the Department and the group that it has lost its fidelity bond. The Department declines to specify prescribed actions that must take place in such an event. Rather, the Department expects a group in such a situation to act prudently for its own protection and to take whatever remedial or corrective actions are necessary to remedy the situation as quickly as possible. In general, the Department anticipates reviewing such instances that may occur in the future on a case-by-case basis. However, the Department notes that failure to meet the fidelity bond requirements would be considered a violation of Chapter 407A of the Labor Code and could subject a group to regulatory action, including possible disciplinary action under the Labor Code, Chapter 407A, Subchapter I.

§5.6411. Contract Provisions

Comment: Two commenters object to proposed §5.6411(a) and (b) because the qualifier in §5.6403(c)(12)(B) for which vendors will require a written agreement is vague. Both commenters request that §5.6411(a) and (b), in addition to §5.6403(c)(12)(B), be limited to persons handling member contributions and distributions and with ultimate authority over claims. According to one of the commenters, at best, proposed §5.6411(a) and (b) and proposed §5.6403(c)(12)(B) do not provide sufficient direction as to when a contract is required, and at worst, it will result in a group focusing on written agreements with any and all persons that touch the business of the group, creating unnecessary administrative burdens. The second commenter states that the qualifier for which vendors will require a written agreement is vague and does not provide sufficient direction as to when a contract is required. The commenter states that this could result in a group focusing on compliant written agreements with any and all persons that touch the business of a group, a result which is burdensome and to which many vendors may not be amenable, thus limiting choices of the group and its administrator to obtain the most efficient and cost effective service. Another commenter states that the definition of "service company" will also control who must comply with the contracting requirements of proposed §5.6411. The commenter states that the definition of "service company" includes many persons who may not even suspect that the definition and resulting contracting requirements apply to them.

Agency Response: The Department agrees and has revised §5.6403(c)(12)(B) as adopted in order to specify the parties that are subject to the contracting requirements of §5.6411(a) and (b) as adopted. The revisions to §5.6403(c)(12)(B) as adopted, in conjunction with §5.6403(c)(12)(A) and §5.6411(a) and (b) as adopted, specify that the contracting requirements that apply to a group's administrator, to third party administrators, or to any service companies that perform one or more of the following services: (i) provide cash and asset management services to a group, including any person that has access to or disbursement authority over any of the group's assets and accounts; (ii) maintain the group's accounting records or organizational documents; (iii) store or maintain the group's electronic books and records, including a person identified by a group under §5.6409(b)(3); or (iv) provide management of a function for which the group retains ultimate responsibility for under the Insurance Code, the Labor Code, or rules adopted thereunder. The Department also revised §5.6411(b) to clarify the contracting requirements applicable to subcontractors and for consistency with the changes made to the proposed language in §5.6403(c)(12)(B).

Comment: A commenter requests that proposed §5.6411(d)(1) be withdrawn because, according to the commenter, it is pointless. The commenter states that the groups are already required to abide by the laws of the State of Texas and rules promulgated by the Department. According to the commenter, requiring groups to execute statements that they will do so with regard to any portion of the rules does not enhance either the ability of the Department to enforce its rules or the responsibility of a group to follow them. The commenter states it is simply another piece of paper in what is already an extensive set of regulations.

Agency Response: The Department disagrees with the commenter's interpretation of the purpose of §5.6411(d) and declines to delete §5.6411(d)(1). Entities or individuals acting as the administrator, a third party administrator, or a service company for a group may provide functions or services requiring compliance with various provisions of the Insurance Code or Labor Code and obtaining various licenses from the Department. In order to ensure that these entities and individuals operate in a legal and proper manner, it is essential that these entities and individuals understand and agree to comply with the relevant statutory and regulatory requirements related to these functions or services. The purpose of §5.6411(d)(1) is to better ensure that any administrator, service company, or third party administrator that a group is required to contract with under §5.6411(a) or (b) understands, acknowledges and agrees to comply with the applicable requirements of the Insurance Code and Labor Code and rules adopted thereunder, including holding the appropriate licenses or certificates of authority under the Insurance Code or the Labor Code.

§5.6412. Operational Review Plan

Comment: A commenter states that the definition of "service company" will control who must comply with the quarterly reporting requirements of proposed §5.6412. The commenter states that the definition of "service company" includes many persons who may not even suspect that the definition and resulting reporting requirements apply to them.

Agency Response: The Department agrees that a group should have clarity with regard to the specific service companies that the group will be required to exercise oversight over pursuant to §5.6412. Those service companies are identified in §5.6403(c)(12)(A) and (B). Section 5.6403(c)(12)(B) as adopted is revised to provide that the quarterly reporting requirements of §5.6412 apply to a group's service companies that perform one or more of the following services: (i) provide cash and asset management services to a group, including any person that has access to or disbursement authority over any of the group's assets and accounts; (ii) maintain the group's accounting records or organizational documents; (iii) store or maintain the group's electronic books and records, including a person identified by a group under §5.6409(b)(3); or (iv) provide management of a function for which the group retains ultimate responsibility for under the Insurance Code, the Labor Code, or rules adopted thereunder. Section 5.6403(c)(12)(A) as adopted further provides that the quarterly reporting requirements of §5.6412 as adopted apply to a group's service companies that are third party administrators.

Comment: One commenter objects to the quarterly reporting requirement in proposed §5.6412(b)(1) and suggests that the projections be on an annual basis with quarterly reporting for monitoring. The commenter expresses concern that the required quarterly reporting could become "an end in itself rather than a tool, leading to a board being forced to filter through and respond to information which may be irrelevant to monitoring the sound operation of their fund." The commenter suggests deleting "each quarter of" in (b)(1) and inserting in (b)(3) "if any" between "provide for corrective action" and "as determined by the board." According to the commenter, an example is subsection (b)(1), which requires the group to receive estimated projections for each quarter of the upcoming year. Subsection (b)(3) then requires the board to determine corrective action if the performance does not meet projections. The commenter states that quarterly projections are not meaningful in relation to the small size of most groups, and no corrective action may be needed.

Agency Response: The Department declines to make the requested changes. A primary purpose of §5.6412 is to provide a means to conduct effective oversight of a group, including overseeing those functions of a group performed by any person re-

quired to enter into a written agreement pursuant to §5.6411(a) or (b). The Department's position is that quarterly oversight is a prudent business practice that is typically conducted by conservatively run business enterprises in order to timely identify issues that may generate substantial concerns and allow corrective action to be promptly implemented. Quarterly projections are needed for a group to conduct effective quarterly oversight. Review of the quarterly projections will enable a group to better assess its abilities to meet its obligations under the Labor Code, the Insurance Code, and regulations adopted thereunder. Additionally, quarterly review will enable a group to foresee potential financial problems or solvency issues at an earlier date, so that corrective action can be taken immediately. Adopted §5.6412(a) allows a group to exercise discretion in developing an operation review plan that meets its needs. The group is also given discretion in the development of the quarterly projections, subject to the requirements of §5.6412(a). Finally, the group is given discretion in determining what corrective action if any is necessary pursuant to §5.6412(b)(3) as adopted.

General

Comment: One commenter expresses support for the Department's attempt to clarify regulatory issues that have arisen over the last couple of years. Another commenter states support for the need for rules to regulate third-party administrators who manage and adjust workers' compensation claims.

Agency Response: The Department appreciates the comments.

Comment: A commenter states that more clarity as to the responsibilities of the groups will ensure better and more consistent compliance with existing law and regulations. The commenter states it shares the Department's goal of having mechanisms in place to allow early detection of potential financial problems with a group. The commenter further states that these goals have to be balanced with allowing existing groups and the group self-insurance market to be successful and provide a stable and affordable workers' compensation option for Texas small and mid-sized employers.

Agency Response: The Department agrees that clarifying the responsibilities of groups and their delegated entities under the Labor Code Chapter 407A and the adopted rules should ensure more efficient regulation and better industry compliance. The goal of the adopted rules is to better regulate the solvency and financial stability of groups, to ensure that workers' compensation benefits are available on a timely basis, to require appropriate oversight over a group's delegated entities, and to prevent solvency and mismanagement issues similar to those recently experienced in other states' workers' compensation self-insurance group markets from occurring in Texas.

Comment: A commenter states that additional regulations should be narrowly focused on addressing a specific problem not already addressed by rule or to clarify existing rules and the law applicable to groups. The commenter further states that any additional requirements that do not address a specific issue or do not address the issue in the least burdensome way will divert money and attention from paying claims and into administration. The commenter states that forcing unnecessary focus on administration could result in less attention to the main purpose of paying claims appropriately and may make groups less competitive and successful, which in turn will slow growth and possibly endanger the survival of the group and impact the Texas Self-Insurance Group Guaranty Fund. The commenter states that absent a known specific problem that is narrowly addressed, the commenter recommends not adding more burdens to the groups or the Department.

Agency Response: The Department disagrees that the adopted rules do not address specific issues affecting groups and their delegated entities. Consistent with the statutory requirements in the Labor Code §§407A.001, 407A.002, 407A.005, 407A.008, 407A.009, 407A.051, 407A.052, 407A.053, 407A.054, 407A.056, 407A.057, 407A.201, 407A.252, 407A.355, and 407A.455, the adopted rules strengthen the viability of groups, the Texas Self-Insurance Group Guaranty Fund, and the overall workers' compensation system by augmenting groups' solvency and financial requirements, requiring necessary oversight of groups' delegated entities, ensuring that workers' compensation benefits are available on a timely basis, and by detecting groups' potential hazardous financial conditions at an earlier point in time.

Comment: Two commenters raised issues with the Department's statutory authority to adopt portions of the proposed rules and objected to the applicability of these portions of the proposed rules to workers' compensation self-insurance groups. Both commenters assert that to the extent that these rules apply provisions in the Insurance Code Chapter 4151 required of insurers to groups, the rules are contrary to HB 472. According to one commenter, an amendment made in a Senate Committee to HB 472 very specifically took groups out of the oversight, audit, and other requirements for insurers. The commenter opined that, while the Department has broad rulemaking authority under the Labor Code Chapter 407A, groups are not insurers. The commenter states that rules must not be contrary to the legislative intent to not treat groups as insurers and that groups not be required to comply with the detailed requirements for insurers. The other commenter states that an amendment in the Senate State Affairs Committee specifically excluded groups from these requirements. The commenter states that its interest is parallel to the Department's interest regarding solvency of groups, but some of the proposed regulations arguably go beyond the Department's statutory authority and may not be the most effective and efficient means of alerting the group or the Department to potential solvency issues.

Agency Response: The Department disagrees that the adopted rules exceed the Department's rule-making authority to adopt rules. The Department further disagrees that it is applying provisions of the Insurance Code Chapter 4151 required of insurers to groups and thus is acting contrary to the legislative intent in enacting HB 472 as relates to the regulation of groups. The Department proposed and adopted the rules under the authority in the Labor Code Chapter 407A, and not under the authority in the Insurance Code Chapter 4151. Specifically, the amendments and new sections were proposed and adopted under the Labor Code §§407A.001, 407A.002, 407A.005, 407A.008, 407A.009, 407A.051, 407A.052, 407A.054, 407A.056, 407A.057, 407A.201, 407A.252, 407A.355, 407A.455, and the Insurance Code §36.001. In pertinent part, the Labor Code §407A.051(e) specifically requires the Commissioner to evaluate the financial information provided with the application for a certificate of approval as necessary to ensure that the funding is sufficient to cover expected losses and expenses and that the funds necessary to pay workers' compensation benefits will be available on a timely basis. Further, the Labor Code §407A.252 provides that the Commissioner shall examine the financial condition of each group to determine the group's ability to meet the group's obligations under the Labor Code Title 5 Subtitle A. Additionally, the Labor Code §407A.252 provides

that the Commissioner shall have full access to the records, officers, agents, and employees of a group as necessary to complete an examination under the Labor Code §407A.252. The Labor Code §407A.355 provides that if the Commissioner determines that the group is in a hazardous financial condition, the Commissioner may take action as provided by the Insurance Code Article 21.28-A (enacted without substantive change by the Texas Legislature as the Insurance Code Chapter 443). The Department also is granted rulemaking authority in the Labor Code §407A.008 to implement the Labor Code Chapter 407A. Consistent with this rulemaking authority, the adopted rules strengthen the viability of groups, the Texas Self-Insurance Group Guaranty Fund, and the overall workers' compensation system by (i) in §5.6405, §5.6411 and §5.6412, augmenting groups' solvency and financial requirements, (ii) in §5.6411 and §5.6412, requiring necessary operational review of groups' delegated entities, (iii) in §§5.6404, 5.6405, 5.6411 and 5.6412, ensuring that workers' compensation benefits are available on a timely basis, and (iv) in §§5.6404, 5.6411 and 5.6412, by earlier detecting a group's potential hazardous financial conditions. All of these regulations are appropriate exercises of the Department's regulatory authority under the Labor Code Chapter 407A and consistent with the statutory provisions of the Labor Code Chapter 407A and the Insurance Code Chapter 4151. Further, the Department has proposed a completely separate set of rules to implement the provisions of the Insurance Code Chapter 4151 as amended by HB 472. These proposed rules were published in the *Texas Register* on December 5, 2008. Consistent with the statutory provisions of the Insurance Code Chapter 4151, this separate set of rules apply the provisions of the Chapter 4151, as amended by HB 472, to insurers but do not apply these provisions to groups.

Comment: A commenter states that since each of the rules can be the basis for a violation in an examination, it is important that the rules be clear on what the responsibilities are and how those should be carried out.

Agency Response: The Department agrees and believes that the adopted rules achieve this. In part, the Department believes this is achieved as a result of changes made in response to other comments. Specifically, the Department has revised §5.6403(c)(12)(B) as proposed with respect to a group's service companies. Adopted §5.6403(c)(12)(B), in conjunction with adopted §§5.6403(c)(7), (8), (12)(A), and (13), 5.6404, 5.6408. 5.6411, and 5.6412, provide that the notification, bonding, contracting, and reporting requirements only apply to a group's service companies that perform one or more of the following services: (i) provide cash and asset management services to a group, including any person that has access to or disbursement authority over any of the group's assets and accounts; (ii) maintain the group's accounting records or organizational documents; (iii) store or maintain the group's electronic books and records, including a person identified by a group under §5.6409(b)(3); or (iv) provide management of a function for which the group retains ultimate responsibility for under the Insurance Code, the Labor Code, or rules adopted thereunder.

Comment: A commenter states that some of the provisions in the rules may be appropriate for entities handling money and processing claims but not necessary for other entities. The commenter states that, for example, the rules allow the Commissioner to examine solvency of a person with "management or discretionary decision making authority" under contract with a group.

Agency Response: The Department agrees that some of the provisions may be appropriate for certain service companies and not for other service companies. In response to comments, the Department has revised §5.6403(c)(12)(B) as adopted so that the notification, bonding, contracting, and reporting requirements of the adopted rules apply only to service companies that perform one or more of the following services: (i) provide cash and asset management services to a group, including any person that has access to or disbursement authority over any of the group's assets and accounts; (ii) maintain the group's accounting records or organizational documents; (iii) store or maintain the group's electronic books and records, including a person identified by a group under §5.6409(b)(3); or (iv) provide management of a function for which the group retains ultimate responsibility for under the Insurance Code, the Labor Code, or rules adopted thereunder. These changes have the effect of narrowing the number and types of service companies subject to examination by the Commissioner under §5.6411(d)(2).

Comment: One commenter states that the proposed rules raise questions about the intent of Department staff with regard to the regulation of third-party administrators for self-insured employers and other entities or individuals who provide specific services to a group or a group's third-party administrator. The commenter states that the rules should not treat or classify entities or individuals who provide specific services to a group or the group's third-party administrator as a managing company, administrator, or service company for the purposes of the Labor Code Chapter 407A and the Insurance Code Chapter 4151. According to the commenter, HB 472 requires the rules adopted by the Commissioner to be fair, reasonable, and appropriate to augment and implement the Insurance Code §4151.006. The commenter states that the Legislature did not intend for rules adopted to implement the Insurance Code Chapter 4151 to subject entities or individuals to dual regulation or subject them to regulation that creates an unreasonable burden. The commenter states that Department staff may not understand how workers' compensation claims are adjusted and managed. The commenter states that Department staff may not be aware of the fact that the entities or individuals who provide specific services to insurers and third-party administrators are already regulated by the Division of Workers' Compensation and that many of these entities are already certified by the Department under other provisions of the Insurance Code and Department rules.

Agency Response: The intent of the rules is to regulate groups and their relationships with administrators and other entities or individuals who provide specific services to a group or a group's administrator in accordance with the Labor Code Chapter 407A and the Insurance Code Chapter 4151. The rules, which are consistent with the statutory scheme, treat or classify entities or individuals who provide specific services to a group or the administrator as a managing company, administrator, or service company in accordance with the Labor Code Chapter 407A and the Insurance Code Chapter 4151. The rules do not subject any persons to dual regulation. Pursuant to the Labor Code Chapter §407A and adopted new §5.6402, a person who is engaged by the board of trustees of a group under the Labor Code Chapter 407A to implement the policies established by the board of trustees and to provide day-to-day management of the group is subject to the requirements of the Labor Code Chapter 407A and Department rules, as those requirements relate to administrators. Pursuant to the Labor Code Chapter §407A and adopted new §5.6402, a person who provides services to a group, other than those services provided by the administrator of the group, is

subject to the requirements of the Labor Code Chapter 407A and Department rules, as those requirements relate to service companies. Pursuant to the Labor Code §407A.009, a person acting as an administrator as defined in the Insurance Code Chapter 4151 is subject to the requirements of the Insurance Code Chapter 4151 and Department rules, as those requirements relate to Chapter 4151 administrators. Therefore, one person may be simultaneously subject to the requirements of several provisions of the Insurance Code, the Labor Code, or rules adopted thereunder if the functions or services performed or offered by that person require such regulation. In the event that a person performs or offers several functions or services on behalf of a group that require regulation under different provisions of the Insurance Code, Labor Code, or rules adopted thereunder, that person will be required to hold all appropriate authorizations and comply with all applicable statutes and rules in order to perform or offer the regulated functions and services. This is because a single authorization issued pursuant to the Insurance Code or the Labor Code does not authorize a person to perform or offer any additional regulated functions or services than those specified by the authorization. Each authorization relates to specific functions or services regulated under specific Insurance Code or Labor Code provisions. Therefore, a person must hold the applicable authorizations in order to perform or offer the corresponding regulated functions or services.

Comment: One commenter requests that the proposed rules be clarified to specifically exempt from regulation 19 persons and entities specified in the Insurance Code §4151.002 that are exempted by the Insurance Code §4151.002 from the provisions of Chapter 4151. The commenter states that the Commissioner does not have the statutory authority to adopt rules that would result in the dual regulation of these persons. The commenter also requests that the Department acknowledge in either the adopted rules or the adoption preamble that these persons are not third party administrators or service companies and are not subject to the requirement set forth in the proposed rules to obtain a certificate of authority or report any data other than that required under other provisions of the Insurance Code and associated rules and the Labor Code and associated rules. The commenter states the following to support the commenter's requests: (i) the Insurance Code §4151.002 identifies persons and entities that are exempted from the provisions of Chapter 4151; (ii) there are 19 examples of various persons with whom groups or third-party administrators contract for services; (iii) none of the 19 persons collect premiums or contributions from or adjust or settle claims on behalf of a group; (iv) each of the 19 persons provide services to a group or third-party administrator that are advisory or technical in nature and do not constitute the adjusting or settling of a claim; (v) the group or third-party administrator retains decision-making for resolving disputed claims issues in benefit disputes, determining whether or not a medical bill is to be paid or denied, and determining whether or not health care presented for pre-authorization is approved; (vi) the Labor Code and associated rules regulate these activities and provide for enforcement of the associated rules; (vii) the insurer or group is responsible for any violation of Division of Workers' Compensation rules as they relate to the payment of benefits; (viii) these 19 persons are directly regulated by either the Department or the Division of Workers' Compensation under another section of the Insurance Code and related rules or the Labor Code and related rules; and (ix) the Division of Workers' Compensation's enforcement authority and authority to impose a financial penalty on an insurer, group, third party administrator, or attorney representing an insurer or group adequately provides for the regulation of such persons.

Agency Response: The Department disagrees that the proposed rules need to be clarified to specifically exempt from regulation the persons and entities exempted from regulation under the Insurance Code Chapter 4151 as provided in §4151.002. The adopted rules do not address the applicability of the exemptions contained in the Insurance Code Chapter 4151, nor do they interpret the requirements of that chapter. This is not necessary or appropriate for these adopted rules. The purpose of the adopted rules is to regulate groups and their relationships with third-party administrators and other entities or individuals who provide specific services to a group or a group's third-party administrator in accordance with the Labor Code Chapter 407A and the Insurance Code Chapter 4151. These adopted rules do not address the applicability of the Insurance Code Chapter 4151. The applicability of the Insurance Code Chapter 4151 is addressed in the rules that implement Chapter 4151, which are in Chapter 7, Subchapter P of Title 28 of the Texas Administrative Code. The rules in this adoption define a "service company" under the Labor Code Chapter 407A as "a person that directly or indirectly provides services to or on behalf of a group, other than the services provided by an administrator, including, but not limited to: (i) claims adjustment; (ii) safety engineering; (iii) compilation of statistics and the preparation of premium, loss, and tax reports; (iv) preparation of other required self-insurance reports; (v) development of members' assessments and fees; and (vi) administration of a claim fund. However, in response to other comments, the Department has revised §5.6403(c)(12)(B) as proposed with respect to a group's service companies. Adopted §5.6403(c)(12)(B), in conjunction with adopted §§5.6403(c)(7), (8), (12)(A), and (13), 5.6404, 5.6408. 5.6411, and 5.6412, provide that the notification, bonding, contracting, and reporting requirements only apply to a group's service companies that are third-party administrators or that perform one or more of the following services: (i) provide cash and asset management services to a group, including any person that has access to or disbursement authority over any of the group's assets and accounts; (ii) maintain the group's accounting records or organizational documents; (iii) store or maintain the group's electronic books and records, including a person identified by a group under §5.6409(b)(3); or (iv) provide management of a function for which the group retains ultimate responsibility for under the Insurance Code, the Labor Code, or rules adopted thereunder.

Comment: Three commenters assert that the Legislature never intended for the rules adopted to implement the provisions of the Insurance Code Chapter 4151 to include an attorney or law firm as a party regulated as a third-party administrator or service company. All three commenters assert that lawyers and their law firms are regulated by the Supreme Court of Texas and the State Bar of Texas. Therefore, law firms should not be subject to the proposed rules. Two of the commenters assert that the regulation of lawyers under the proposed rules would violate the Texas Constitution, Section I, Article II. According to one commenter, any attempt by the Department to impose a licensure obligation on law firms would impinge upon the authority of the Texas Supreme Court and the State Bar of Texas to regulate the practice of law. According to two commenters, the Insurance Code Chapter 4151 was the Legislature's action to give the Department the authority to regulate third-party administrators who were not subject to regulation by any other agency. One commenter states that the background and purpose of the bill, as de-

scribed in the bill analysis in CSHB 472, makes this point clear. The commenter states that a common thread running throughout the Insurance Code Chapter 4151 is the Legislature's attempt to enlarge the Department's regulatory authority without impinging upon other regulatory schemes. Two commenters cite the example that the statute provides an exemption for licensed adjusters but not for their adjusting companies. One commenter states that at first glance, there appears to be parallel regulatory intent with regard to attorneys. The commenter states that the statute contains an express exemption for licensed attorneys, but not for law firms comprised of licensed attorneys. The commenter asserts that any attempt to include law firms in the group of organizations requiring licensure under Chapter 4151 carries separation of powers concerns and would be unconstitutional under the Texas Constitution, Section I, Article II. According to this commenter, there is a 1999 Texas Supreme Court case to support the principle that regulation of attorneys and the firms in which they organize is the responsibility of the Supreme Court of Texas and the State Bar of Texas. The commenter expresses doubt regarding whether an express legislative grant of licensure authority to an administrative agency with regard to licensure of law firms would be constitutional. The commenter further states that the Legislature has not expressly delegated such licensure authority to the Department. The commenter also states that semi-annual audits and on-site examinations by the Commissioner would be administratively difficult, if not impossible, to implement and might run afoul of the attorney-client privilege.

Agency Response: The proposal does not address the regulation of law firms under the Insurance Code Chapter 4151.

Comment: A commenter states that some of the proposed language is vague and may lessen or even eliminate any benefit of efficiency and compliance. The commenter states that some of the new language can be interpreted to increase potential filings, unnecessarily burdening both the groups and the Department, and result in arguments over compliance in an examination. The commenter states that while it agrees that timely and sufficient payment of benefits to injured workers is of paramount importance, the commenter does not believe this is directly affected by the rules (e.g., increased excess insurance ensures that the group will not have to pick up the catastrophic costs but will not change the timeliness or accuracy of benefit payments that must be made by the group and reimbursed by the excess carrier). The commenter agrees that the prevention of insolvency will lessen any interruption or problems in payment of benefits. The commenter states that the timeliness and accuracy of benefit payments on a regular basis is not directly affected by these rules and that appropriate benefit payments are in the regulatory authority of the Division of Workers' Compensation, which has an extensive enforcement mechanism.

Agency Response: While the commenter does not specify which of the proposed language is vague and may lessen or eliminate any benefit of efficiency and compliance or which language can be interpreted to increase potential filings, the Department has identified and revised several of the proposed amendments and new sections as adopted to: (i) clarify which of a group's service companies must be identified in a group's business plan (§5.6403(c)(12)(B)); (ii) clarify which persons are subject to the contracting and operational review plan requirements (§5.6403(c)(12)(B) and §5.6411(a) and (b)); (iii) clarify the bonding requirements for administrators and service companies (§5.6408); and (iv) clarify the information that must be submitted to the Department upon application for a certificate of approval (§5.6403(c)(12)(B) and (C)). The Department disagrees that the timeliness and accuracy of benefit payments are not directly affected by these rules. One purpose of the adopted amendment to §5.6405(a) is to enhance the protection of a group's financial condition and health by increasing the minimum excess insurance requirements for each group. By protecting groups against the financial impact of catastrophic claims, the adopted amendment to §5.6405(a) provides additional assurance that groups have sufficient financial ability to pay workers' compensation benefits in a timely and accurate manner, as contemplated by the Labor Code §407A.051(e). If a group has insufficient specific excess insurance to cover the catastrophic losses, the group is obligated to pick up the portion of catastrophic losses not covered by the excess insurance. This additional liability can cause a group to have significant financial problems, and even result in financial insolvency, which can lead to workers' compensation benefits being paid untimely or inaccurately. Also, one purpose of adopted new §5.6412 is to require that a group monitor the actions of certain contractors and sub-contractors and to ensure that the actions, or inactions, of these contractors and sub-contractors do not result in a hazardous financial condition for the group and negatively effect the group's ability to make timely and accurate benefit payments on a regular basis to injured workers.

Public Benefit/Cost Note

Comment: A commenter states that the estimated costs for certain proposed requirements are most likely too low. For example, the commenter states that, although the cost of an actuary could be $50.61 per hour if the actuary is on staff, most groups do not have actuaries on staff and the hourly rate would be much higher. The commenter agrees that there will be benefits and costs associated with the proposed rules and appreciates the Department's consideration of some of the problems that arose with earlier rules. The commenter states that cost alone should not prevent adoption of necessary regulations, but the commenter wants to ensure that any additional cost is to address a specific problem and is addressed in the most effective way in terms of both cost and impact on the problem. The commenter states that the actual cost will be directly affected by whether the language in proposed §5.6403 is clarified and narrowed as the commenter recommends. The commenter objects to proposed §5.6403(c)(12)(B) that requires a business plan or plan of operation that describes the group's business activities, safety program, and organization to include the identity of any service company that has management or discretionary decision making authority relating to a function the group retains ultimate responsibility for under the Labor Code, the Insurance Code, or regulations adopted thereunder. According to the commenter, the qualifier "any service company that has management or discretionary decision making authority" does not clearly delineate which service companies must be included in the plan of operation. The commenter states that this provision will also affect what notifications of changes in the information must be provided to the Department over time. The commenter states that many people who provide services to a group have some discretion and that discretion may affect the adjustment of claims, but they do not have the ultimate authority over payment of the claim.

Agency Response: The Department disagrees that the estimated costs for certain requirements are too low, including the commenter's example of the estimated hourly cost of an actuary being too low. The Department's Public Benefit/Cost Note published in the July 25, 2008 *Texas Register* identified the costs associated with each of the proposed requirements. In some cases, the Department determined that a cost for a specific

requirement could vary between groups or delegated entities. In those cases, the Department specifically identified the factors that could affect the actual cost incurred by a particular group or delegated entity when complying with a specific requirement. Further, some costs could be affected by individual business decisions made by a particular group or delegated entity. The Department identified the specific situations where a particular cost could be affected by such individual business decisions. The Department also identified the potential cost savings that could be realized by groups and delegated entities as a result of certain sections of the proposed rules. Those sections as proposed provided for a reduction in the amount of required administrative filings and new innovative and cost saving storage and maintenance options. The Department also identified the benefits associated with the proposed rules in the published Public Benefit/Cost Note.

Only one specific example was provided by the commenter to support the commenter's assertion that the costs are most likely too low, which relates to the cost of an actuary's services for determining the appropriate level of a group's excess insurance. The requirement to obtain an actuarial analysis of the appropriate level of specific excess insurance for the group is not a new requirement, but one already mandated in existing §5.6405. Further, the actuarial analysis required by §5.6405(c) as adopted is not a mandatory requirement. Rather, it is an optional provision that groups, at their discretion, may elect to pursue. Specifically, §5.6405(c) as adopted provides an option that groups may elect to pursue in order to obtain a waiver from the requirements of §5.6405(a) as adopted. Section 5.6405(a) as adopted requires that a group obtain excess insurance for losses that exceed the group's retention in an amount that will pay all benefits required under the Labor Code and rules adopted thereunder for a compensable claim. Section 5.6405(c) as adopted provides a group the option to petition the Department from relief from §5.6405(a) as adopted in order to purchase a lesser amount of excess insurance. However, the Department is concerned with avoiding a potentially hazardous financial condition or insolvency that may result in unpaid claims owed to injured Texas workers. Therefore, §5.6405(d) as adopted provides that, in order to assist the Commissioner in reviewing a petition filed under §5.6405(c) as adopted, the group shall submit an analysis prepared by an actuary of the appropriateness of the specific excess insurance for the group. In the cost note for this optional provision, the Department clearly noted that the services of an actuary would be required and provided an indication of the costs of an actuary using independent third party data provided by the U.S. Department of Labor. Further, the Department notes that §5.6405(d) codifies a process followed by the Department in the past for a group to submit an actuarial analysis of the appropriateness of the specific excess insurance for a group. The Department fully anticipates that any group that elects to pursue this option and receives the Department's approval to obtain a lesser amount of excess insurance will experience an overall cost savings that substantially exceeds the costs anticipated to be incurred for compliance under §5.6405(d). This is because the costs to purchase a lesser amount of excess insurance will be significantly cheaper, and the cost savings will exceed any additional actuarial costs incurred under §5.6405(d) as adopted.

Additionally, the commenter states that the actual cost will be directly affected by whether the language in proposed §5.6403 is clarified and narrowed as the commenter recommends. In response to the comments from this commenter and other commenters, the Department has revised and narrowed §5.6403(c)(12)(B) as adopted. Under adopted §5.6403(c)(12)(B), the notification, bonding, contracting, and reporting requirements of the adopted rules apply only to a group's service companies that perform one or more of the following services: (i) provide cash and asset management services to a group, including any person that has access to or disbursement authority over any of the group's assets and accounts; (ii) maintain the group's accounting records or organizational documents; (iii) store or maintain the group's electronic books and records, including a person identified by a group under §5.6409(b)(3); or (iv) provide management of a function for which the group retains ultimate responsibility for under the Insurance Code, the Labor Code, or rules adopted thereunder. Section 5.6403(c)(12)(A) as adopted further provides that the notification, bonding, contracting, and reporting requirements of the adopted rules apply to a group's service companies that are third party administrators. The Department appreciates the commenter's acknowledgement that the Department considered concerns that arose with the earlier rules. The Department also appreciates that the commenter's statement that cost alone should not prevent the adoption of necessary rules.

Economic Impact Statement

Comment: A commenter disagrees that there is no adverse effect on a group simply because a group does not meet the definition of a small business. The commenter states that groups will have some additional costs and since groups are non-profit and for the benefit of its members, it is even more important that any increased costs are tied to reasonable and narrowly drawn rules to address specific real problems. The commenter states that the need and extent of additional regulation must be balanced against the legislative desire for an additional affordable and available source of workers' compensation coverage for Texas small and mid-size employers and the continued health of existing self-insurance groups, which will protect injured workers, employer members of the group, and the Texas Self Insurance Group Guaranty Fund. The commenter opines that there may be some minimal changes to the proposed rules that will both protect the health, safety, and economic interests of injured Texas workers and the welfare of the state in a less burdensome and clearer way.

Agency Response: Because the commenter does not provide any suggested minimal changes to the proposed rules, the Department is unable to comment on such changes. The Department understands the commenter's disagreement and concern that because a group does not meet the definition of a small business that there is no adverse effect on a group. The Department, however, followed the requirements of the Government Code §2006.002(c) in determining whether there would be an adverse effect on a group and therefore, whether the Department was required to prepare a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Pursuant to the Government Code §2006.002(c), the Department is required to provide an economic impact statement and a regulatory flexibility analysis that projects the economic impact of a rule on a small or micro-business only if the Department's proposal would have an adverse economic affect on a small business or micro-business. The Government Code §2006.001(2) defines a small business as a legal entity, including a corporation, partnership, or sole proprietorship, that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has fewer than 100 employees or less than $6 million in annual gross receipts. The Government Code §2006.001(1) defines a micro

business as a legal entity, including a corporation, partnership, or sole proprietorship, that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has not more than 20 employees. As required by the Government Code §2006.002(c), the Department determined that the proposed rules would not have an adverse economic impact on any workers' compensation self-insurance group currently holding a certificate of approval under the Labor Code Chapter 407A or any applicant for a certificate of approval under the Labor Code Chapter 407A because neither a group nor any applicant met the definition of a small or micro business under the Government Code §2006.001(1) and (2). Each of these elements must be met in order for an entity to qualify as a small or micro business. Neither a group nor an applicant meet the second requirement because neither a group nor an applicant can be independently owned and operated. Generally, independently owned and operated businesses are self-controlling entities that are not subsidiaries of other entities, are not otherwise subject to control by other entities, and are not publicly traded. Additionally, if, as the commenter states, groups are non-profit, they do not meet the for-profit requirement of the small business and micro business definitions. Because the Department determined that neither a group nor an applicant can meet the requirements to qualify as a small business under the Government Code §2006.001(2)(B), the law does not require the Department to prepare a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the proposed rule.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTIONS.

For, with changes: The Surety & Fidelity Association of America; Texas Self-Insurance Group Guaranty Fund; Texas Group Insurance Association; Texas Cotton Ginner's Trust.

Against: None.

Neither for nor against, with recommended changes: Pringle & Gallagher, LLP; Parker & Associates, LLC; Insurance Council of Texas; Flahive, Ogden, and Latson; Texas Construction Trust; Texas Alliance of Energy Producers.

STATUTORY AUTHORITY. The amendments and new sections are adopted under the Labor Code §§407A.001, 407A.002, 407A.005, 407A.008, 407A.009, 407A.051, 407A.052, 407A.054, 407A.056, 407A.057, 407A.201, 407A.252, 407A.355, 407A.455, and the Insurance Code §36.001. The Labor Code §407A.001 defines administrator, Commissioner, Department, group, managing company, modified schedule rating premium, same or similar, and service company. The Labor Code §407A.002 provides that an unincorporated association or business trust composed of five or more private employers may establish a workers' compensation self-insurance group under the Labor Code Chapter 407A, provided certain stated conditions are met. The Labor Code §407A.005 requires an association of employers to hold a certificate of approval issued under the Labor Code Chapter 407A in order to act as a workers' compensation self-insurance group. The Labor Code §407A.008 provides that the Commissioner shall adopt rules as necessary to implement the Labor Code Chapter 407A. The Labor Code §407A.009 requires an administrator or service company under the Labor Code Chapter 407A that performs the acts of an administrator as defined in the Insurance Code Chapter 4151 to hold a certificate of authority under the Insurance Code Chapter 4151. The Labor Code §407A.051(a) requires an association of employers that proposes to organize as a workers' compensation self-insurance group to file an application for a certificate of approval with the Department. Additionally, the Labor Code §407A.051(b) and (c) enumerates the particular items that must be included in an applicant's application for a certificate of approval. The Labor Code §407A.051(d) requires a group to notify the Commissioner of any change in the information required to be filed under the Labor Code §407A.051(c) or the manner of a group's compliance with the Labor Code §407A.051(c). Finally, the Labor Code §407A.051(e) specifically requires the Commissioner to evaluate the financial information provided with the application as necessary to ensure that the funding is sufficient to cover expected losses and expenses and that the funds necessary to pay workers' compensation benefits will be available on a timely basis. The Labor Code §407A.052 requires the Commissioner to issue a certificate of approval to a proposed group on finding that the group has met the requirements of the Labor Code Chapter 407A Subchapter B. The Labor Code §407A.054 requires a group to obtain specific excess insurance for losses that exceed the group's retention in a form prescribed by the Commissioner. Additionally, the Labor Code §407A.054 provides that the Commissioner may establish minimum requirements for the amount of specific excess insurance based on differences among groups in size, types of employment, years in existence, and other relevant factors. The Labor Code §407A.056 requires an indemnity agreement filed by a group pursuant to the Labor Code §407A.051 to jointly and severally bind the group and each employer who is a member of the group to meet the workers' compensation obligations of each member. Additionally, the indemnity agreement must be in the form prescribed by the Commissioner and must include minimum uniform substantive provisions as prescribed by the Commissioner. Subject to the Commissioner's approval, a group may add other provisions necessary because of that group's particular circumstances. The Labor Code §407A.057 provides that, in addition to the requirements under the Labor Code §407A.051, the Commissioner may require a service company providing claim services to furnish a performance bond of $250,000 in the form prescribed by the Commissioner. The Labor Code §407A.201(c) requires the group to notify the Commissioner and the Commissioner of Workers' Compensation of the cancellation of termination of a membership not later than the 10th day after the date on which the cancellation or termination takes effect. The Labor Code §407A.252 provides that the Commissioner shall examine the financial condition of each group to determine the group's ability to meet the group's obligations under the Labor Code Title 5 Subtitle A. Additionally, the Labor Code §407A.252 provides that the Commissioner shall have full access to the records, officers, agents, and employees of a group as necessary to complete an examination under the Labor Code §407A.252. The Labor Code §407A.355 defines "insolvent." Additionally, this section also provides that if the Commissioner determines that the group is in a hazardous financial condition, the Commissioner may take action as provided by the Insurance Code Article 21.28-A (enacted without substantive change by the Texas Legislature as the Insurance Code Chapter 443). The Labor Code §407A.455 provides that the Texas Self-Insurance Group Guaranty Fund shall provide recommendations to the Commissioner regarding rules or guidelines applicable to groups. The Insurance Code §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.

§5.6403. Application for Initial Certificate of Approval.

(a) An unincorporated association or business trust composed of five or more private employers that proposes to organize as a workers' compensation self-insurance group shall file with the department an application for a certificate of approval.

(b) Contents of the application must include the information required by Labor Code §407A.051.

(c) In addition to the information required under subsection (b) of this section, an applicant shall also provide the following:

(1) A statement that demonstrates that the members of the group are in the same or similar type of business as required by Labor Code §407A.002(a)(1).

(A) The statement should demonstrate that the members of the group have the same governing classification.

(B) If the members of the proposed group have different governing classifications, the statement should demonstrate how the business pursuits of the members of the group are similar enough in operation in the Commissioner of Insurance's discretion to be grouped together.

(2) To aid the department in making the determination that the trade or professional association meets the requirements of Labor Code §407A.002(a)(2) that the trade of professional association has been in existence in this state for purposes other than insurance for five years before the establishment of the group, provide copies of documents relating to the organization, governance and operation of the association and a narrative describing the activities of the association. Annual reports, conventions, seminars, dues requirements, newsletters and other evidence acceptable to the Commissioner of Insurance may be submitted to aid the department in making its determination.

(3) In addition to the copy of the bylaws of the group required by Labor Code §407A.051(c)(6), submit copies of documents relating to the organization, governance and operation of the group.

(4) Projected financial statements for the 24 month period from the group's start of operations using quarterly balance sheet projections based on the group's fiscal year, quarterly cash flow schedules reflecting expenditures by category, quarterly revenue and expense projections and an actuarial projection of the group's total projected incurred liabilities for workers' compensation which demonstrate compliance with Labor Code §407A.051(c)(10) which requires the group to show its financial ability to pay the workers' compensation obligations of the employers who are members of the group and Labor Code §407A.053(c) which requires the group to post security equal to the greater of $300,000 or 25% of the group's total incurred liabilities for workers' compensation. The projections shall include an estimate of the employees to be covered on which the projections and actuarial assumptions are based. The projections must reflect the identity, qualifications and credentials of the persons making the projections.

(5) A written commitment, binder, or policy or contract of excess insurance that meets the requirements of §5.6405 of this division (relating to Excess Insurance).

(6) A fidelity bond for an administrator in the amount of $250,000. The fidelity bond must meet the requirements of §5.6408 of this division (relating to Fidelity and Performance Bonds).

(7) A fidelity bond for a service company identified pursuant to paragraph (12)(A) or (B) of this subsection, if there is one, in the amount of $250,000. The fidelity bond must meet the requirements of §5.6408 of this division.

(8) A performance bond for a service company identified pursuant to paragraph (12)(A) of this subsection that provides claims service to or on behalf of a group, if there is one, in the amount of $250,000. This performance bond is in addition to the fidelity bond required in paragraph (7) of this subsection for a service company. The performance bond shall be in the form prescribed in §5.6408 of this division.

(9) An indemnity agreement executed by the members of the group binding the members, jointly and severally, for the obligations of the group. At a minimum, the agreement shall include the provisions described in §5.6406 of this division (relating to Indemnity Agreement).

(10) An acknowledgement, in the form prescribed in §5.6407 of this division (relating to Acknowledgement of Indemnity Agreement), executed by each member of the group that it is aware that it can be called upon to pay the workers' compensation claims of another member of the group pursuant to the Labor Code Chapter 407A.

(11) The statement required by §5.6404 of this division (relating to Notification to the Department and Responsibility for Continued Compliance).

(12) A business plan or plan of operation that describes the group's business activities, safety program, and organization. The plan must also include:

(A) the identity of the administrator of the group and any third party administrator that provides services to or on behalf of the group;

(B) excluding any person identified pursuant to subparagraph (C) of this paragraph, the identity of any service company that performs one or more of the following services:

(i) provides cash and asset management services to a group, including any person that has access to or disbursement authority over any of the group's assets and accounts;

(ii) maintains the group's accounting records or organizational documents;

(iii) stores or maintains the group's electronic books and records, including a person identified by a group under §5.6409(b)(3) of this division (relating to Books and Records); or

(iv) provides management of a function for which the group retains ultimate responsibility under the Insurance Code, the Labor Code, or rules adopted thereunder;

(C) the identity of:

(i) the accountant of the group; and

(ii) the actuary of the group.

(D) a general description of the experience, qualifications, facilities, and personnel of a person identified pursuant to subparagraph (A) or (B) of this paragraph; and

(E) the identity of the affiliates of a person identified pursuant to subparagraph (A) or (B) of this paragraph. A group may identify such affiliates in an organizational chart.

(13) A copy of each written agreement required under §5.6411 of this division (relating to Contract Provisions).

(14) A statement that a third party administrator identified pursuant to paragraph (12)(A) of this subsection either holds the required authorization from the department or has applied for the required authorization from the department and that the group will verify that such authorization has been granted by the department before the group

allows the third party administrator to provide services to or on behalf of the group.

(d) The group must also submit the following:

(1) proof that it has received payment or a promise to pay from each member of 25% of its first year estimated modified schedule rating premium. If the group approves a member's submission of a promise to pay the 25% of premium, the employer must submit payment of the amount promised no later than 10 days after the effective date of the member's coverage with the group, or

(2) a certification by a certified public accountant and an actuary that assets and reserves of the trust satisfy the requirement of the Labor Code §407A.051(c)(11)(B).

(e) Each member of the initial board of trustees of a group, subsequent members of the board of trustees of a group, and the executive officers of a person identified pursuant to subsection (c)(12)(A) or (B) of this section shall provide to the department a completed biographical affidavit in accordance with §7.1604(b)(1)(C) of this title (relating to Application Denial, Suspension, Cancellation, or Revocation). A biographical affidavit is not required if a biographical affidavit from the individual has been filed with the department within the prior three years and contains substantially accurate information. A biographical affidavit must demonstrate that the affiant has sufficient experience, ability, standing, and good record to make success of a group probable.

(f) Each member of the initial board of trustees of a group, subsequent members of the board of trustees of a group, and the executive officers of a person identified pursuant to subsection (c)(12)(A) or (B) of this section shall comply with the requirements of Chapter 1 Subchapter D of this title (relating to Effect of Criminal Conduct).

(g) A person subject to this division and to the requirements of the Insurance Code §4151.055 may satisfy the requirements of §4151.055 by obtaining a fidelity bond that meets the requirements of subsection (c)(6) or (7) of this section, as applicable.

(h) Pursuant to the Labor Code §407A.051(b)(7), the commissioner may require the submission of any other relevant information reasonably required to determine whether to approve or disapprove an application for a certificate of approval.

§5.6408. Fidelity and Performance Bonds.

(a) Fidelity bonds required of an administrator under the Labor Code §407A.051(c)(12) and §5.6403(c)(6) of this division (relating to Application for Initial Certificate of Approval) and a service company under the Labor Code §407A.051(c)(13) and §5.6403(c)(7) of this division must protect against loss caused directly by an act of fraud or dishonesty by the employees of the administrator or service company and such fidelity bond shall include the group as a loss payee.

(b) A performance bond required under the Labor Code §407A.057(a) and §5.6403(c)(8) of this division for a service company providing claims services to or on behalf of a group shall be in substantially the form set forth in subsection (c) of this section.

(c) A performance bond required under the Labor Code §407A.057(a) and §5.6403(c)(8) of this division shall contain the following text and shall be in the following format:
Figure: 28 TAC §5.6408(c)

(d) Administrators and service companies may only obtain a fidelity or performance bond from a surety company authorized to engage in business in this state as a surety or an eligible surplus lines insurer in compliance with the Insurance Code Chapter 981 and regulations adopted thereunder.

(e) An administrator or service company that has a fidelity or performance bond cancelled or terminated and not replaced with new coverage that meets the requirements of the Labor Code Chapter 407A and this division and that is effective concurrently upon the date of the cancellation or termination shall:

(1) immediately inform the commissioner in writing, which in no event shall be later than five business days from the date the administrator or service company first becomes aware of the cancellation or termination; and

(2) immediately inform the group in writing, which in no event shall be later than five business days from the date the administrator or service company first becomes aware of the cancellation or termination.

§5.6411. Contract Provisions.

(a) A group shall execute a written agreement with a person identified pursuant to §5.6403(c)(12)(A) or (B) of this division (relating to Application for Initial Certificate of Approval) that meets the requirements of this section.

(b) If a person identified pursuant to §5.6403(c)(12)(A) or (B) of this division delegates any of the services that it has agreed to provide on behalf of a group to another person, the delegating person shall execute a written agreement with the person to whom the services are delegated. The written agreement must meet the requirements of this section.

(c) A group retains ultimate accountability and responsibility for compliance with all statutory and regulatory requirements, and no written agreement may be construed to limit, in any way, the group's ultimate accountability and responsibility.

(d) A written agreement entered into pursuant to subsection (a) or (b) of this section shall include:

(1) a requirement that the administrator, service company, or third party administrator must comply with the applicable requirements of the Insurance Code and the Labor Code and rules adopted thereunder, including holding the appropriate licenses or certificates of authority under the Insurance Code or the Labor Code;

(2) a requirement that the administrator, service company, or third party administrator must permit the commissioner or the group to examine at any time:

(A) its financial solvency; and

(B) its ability to perform its responsibilities under the written agreement;

(3) a description of the duties or services that the administrator, service company, or third party administrator is expected to provide and any applicable instructions related to the performance of those services, including references to a group's claims handling practices or procedures; and

(4) a provision relating to continuity of services, including run off fee schedules and the transfer of the books and records of a group from one administrator, service company, or third party administrator to another administrator, service company, or third party administrator.

(e) A written agreement entered into pursuant to subsection (a) or (b) of this section shall also ensure that the books and records of the group:

(1) remain the property of the group at all times;

(2) are available to the group or its designee at any time while in the custody of an administrator, service company, or third party administrator; and

(3) will be timely transferred to the group or its designee:

(A) upon request of the group;

(B) at the termination or cancellation of a written agreement entered into by an administrator, service company, or third party administrator pursuant to subsection (a) or (b) of this section; and

(C) in compliance with all applicable statutory and rule requirements.

(f) A written agreement required under subsection (a) or (b) of this section must meet the requirements of this section no later than June 1, 2009.

§5.6412. Operational Review Plan.

(a) A group shall annually adopt an operational review plan that provides for sufficient oversight of any person who is required to enter into a written agreement pursuant to §5.6411(a) or (b) of this division (relating to Contract Provisions). The group may modify the operational review plan at any time in order to meet the group's needs.

(b) The operational review plan shall, at a minimum:

(1) include the group's estimated projections for the information enumerated in paragraph (2) of this subsection for each quarter of the group's upcoming fund year;

(2) require any person that is required to enter into a written agreement pursuant to §5.6411(a) or (b) of this division to submit quarterly reports to the group containing the following information, as applicable:

(A) projected premium revenue for the current fund year and a comparison to premium revenue for the previous fund year;

(B) membership counts, including members lost and gained in the current fund year; and

(C) a summary of the performance of the group for each fund year in which the group has been in existence, including:

(i) number of claims reported;

(ii) incurred losses;

(iii) premium received;

(iv) loss ratio;

(v) expense ratio;

(vi) delineation of claims likely to exceed the specific retention; and

(vii) delineation of fund years likely to exceed any aggregate retention; and

(3) provide for corrective action, as determined by the board of trustees of the group, if the performance of the group does not meet its estimated projections required under this section.

(c) The board of trustees of a group shall consider the reports submitted pursuant to subsection (b) of this section. The reports, the board's consideration of the reports, and the board's recommendations for the group based upon the reports shall be noted in the minutes of the board of trustees of the group and shall be maintained in the books and records of the group.

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

Filed with the Office of the Secretary of State on January 26, 2009.

TRD-200900297
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: February 15, 2009
Proposal publication date: July 25, 2008
For further information, please call: (512) 463-6327

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CHAPTER 21. TRADE PRACTICES

SUBCHAPTER B. INSURANCE ADVERTISING, CERTAIN TRADE PRACTICES, AND SOLICITATION

28 TAC §21.103, §21.114

The Commissioner of Insurance adopts amendments to §21.103(c)(5) and §21.114(7)(C), relating to required form and content of insurance advertisements and rules pertaining specifically to life insurance and annuity advertising. The sections are adopted without changes to the proposed text published in the August 15, 2008, issue of the *Texas Register* (33 TexReg 6545).

REASONED JUSTIFICATION. The amendments are necessary to correct clerical errors contained in Commissioner's Order No. 07-1050 entered and dated November 20, 2007, and published in the November 30, 2007, edition of the *Texas Register* (32 TexReg 8830), effective December 9, 2007.

Amendment to §21.103(c)(5). The adopted amendment to §21.103(c)(5) corrects an erroneous internal reference. Section 21.103 specifies certain required form and content of advertisements that insurers are allowed to use in Texas to advertise their insurance products to Texas consumers. Commissioner's Order No. 07-1050 adopted an amendment to §21.103(c) to implement the provision of HB 2251, 80th Legislature, Regular Session, effective September 1, 2007, codified as Insurance Code §541.082(c). Section 541.082(c) allows the Commissioner of Insurance to permit specified disclosures required in Internet advertising to be made through links to web pages containing the required disclosures. The adopted amendment was also necessary to require that such a link be clearly labeled and conspicuously placed near the relevant information to which it relates. The adopted amendment in Commissioner's Order No. 07-1050 further identifies certain specific disclosures in new §21.103(c)(1) - (5) which may be satisfied through such links. In Commissioner's Order No. 07-1050, §21.103(c)(5) refers to "§21.114(3)(A) of this subchapter (relating to Rules Pertaining Specifically to Life Insurance and Annuity Advertising)." This reference to §21.114(3)(A) is intended to be a reference to the "identification of policy disclosure" that requires the form number or numbers of a policy advertised to be clearly identified in an invitation to contract. Instead, §21.114(3)(A) refers to advertising requirements for the description of premiums and costs paid for individual insurance and annuities. The correct reference is §21.114(1)(A). Therefore, the adopted amendment amends

§21.103(c)(5) to reference §21.114(1)(A), the proper reference to the identification of the policy form number disclosure.

Amendment to §21.114(7)(C). It is necessary to amend §21.114(7)(C) to include clauses (i) and (ii). This is necessary because both clauses were in the existing text prior to the adoption of the amendments to §21.114 in Commissioner's Order No. 07-1050 but were inadvertently omitted from the adoption order. Section 21.114(7)(C) specifies that an advertisement by an insurer may not state or imply an offer of a policy is an introductory, initial, special, or limited offer and that applicants will receive advantages by accepting the offer or that such advantages will not be available at a later date unless it is a fact. Additionally, the provision specifies that an advertisement may not contain phrases describing an enrollment period as "special" or "limited" if the insurer uses such enrollment periods as the usual method of advertising. Clause (i) that was inadvertently omitted regulates advertisements relating to the offering of a particular insurance product for purchase on an individual basis during an enrollment period for that particular insurance product. Clause (ii) that was inadvertently omitted prohibits the inclusion in such advertisements of a statement or implication to the effect that only a specific number of policies will be sold, or that a time is fixed for the discontinuance of the sale of the particular policy advertised because of special advantages available in the policy. In Commissioner's Order No. 07-1050, the only amendment to §21.114(9)(C) (relating to deception as to introductory, initial, or special offers) that was intended to be adopted was the re-designation of §21.114(9)(C) as §21.114(7)(C). However, in Commissioner's Order No. 07-1050, in addition to §21.114(9)(C) being re-designated as §21.114(7)(C), clauses (i) and (ii) were inadvertently omitted. It was not the intent of the Commissioner to delete these clauses. There were no proposed amendments to delete these clauses in the notice of the proposed rule published in the September 28, 2007, issue of the *Texas Register* (32 TexReg 6730). Commissioner's Order No. 07-1050 also does not contain any explanation or mention of the Commissioner's intent to make such deletions. This adoption amends existing §21.114(7)(C) to restore omitted clauses (i) and (ii) into §21.114(7)(C) consistent with the intent of the Commissioner.

HOW THE SECTIONS WILL FUNCTION. The adopted amendment to §21.103(c)(5) deletes the erroneous reference to §21.114(3)(A) and substitutes the correct reference to §21.114(1)(A). Section 21.103 specifies certain required form and content of advertisements that insurers are allowed to use in Texas to advertise their insurance products to Texas consumers. Section 21.103(c) requires that all information required to be disclosed must be set out conspicuously and in close conjunction with the statements to which the information relates or with appropriate captions of such prominence that required information is not minimized, rendered obscure, or presented in an ambiguous fashion, or intermingled with the context of the advertisement so as to be confusing or misleading. It further provides that with regard to Internet advertising, the required disclosures referenced in paragraphs (1) - (5) of subsection (c) may be provided through a conspicuous and clearly labeled link, provided that the link is placed near the relevant information to which it relates. The link must also connect directly to the information necessary to comply with the applicable requirements. Paragraph (5) correctly references §21.114(1)(A), which requires that in the identification of the policy, the form number or numbers of the policy advertised be clearly identified in an "invitation to contract."

The adopted amendments to §21.114(7)(C) add clauses (i) and (ii) that were in the existing rules prior to the adoption of the amendments to §21.114 in Commissioner's Order No. 07-1050 issued in November 2007. The addition of the two clauses restores the same provisions that were in §21.114(9)(C) prior to the November 2007 adoption. Section 21.114(7)(C) specifies that an advertisement by an insurer may not state or imply an offer of a policy is an introductory, initial, special, or limited offer and that applicants will receive advantages by accepting the offer or that such advantages will not be available at a later date unless it is a fact. Additionally, the provision specifies that an advertisement may not contain phrases describing an enrollment period as "special" or "limited" if the insurer uses such enrollment periods as the usual method of advertising. Clause (i) regulates advertisements relating to the offering of a particular insurance product for purchase on an individual basis during an enrollment period for that particular insurance product. Clause (ii) prohibits the inclusion in such advertisements of a statement or implication to the effect that only a specific number of policies will be sold, or that a time is fixed for the discontinuance of the sale of the particular policy advertised because of special advantages available in the policy.

SUMMARY OF COMMENTS. The Department did not receive any comments on the published proposal.

STATUTORY AUTHORITY. The amendments are adopted pursuant to §36.001 of the Insurance Code which authorizes the Commissioner of Insurance to 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.

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

Filed with the Office of the Secretary of State on January 22, 2009.

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

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SUBCHAPTER LL. REQUIREMENTS FOR SUBMISSION OF INFORMATION AND DATA TO FACILITATE STUDY BY ADVISORY COMMITTEE ON HEALTH NETWORK ADEQUACY

28 TAC §§21.4601 - 21.4605

The Commissioner of Insurance adopts new §§21.4601 - §21.4605, concerning the requirements for health benefit plan issuers' submission of information and data relating to the use of non-network providers by health benefit plan insureds and enrollees and the payments made to those providers, as well as similar information and data for in-network providers, necessary to support the study of facility-based provider network adequacy

of health benefit plans by the Advisory Committee on Health Network Adequacy. Sections 21.4602 - 21.4605 are adopted with changes to the proposed text published in the October 3, 2008, issue of the *Texas Register* (33 TexReg 8281). Section 21.4601 is adopted without changes. Form No. LHL608 (Health Benefit Plan/Provider Contracting Practices Survey) and Form No. LHL609 (Health Benefit Plan Issuer Hospital Grid) are adopted by reference without changes to either form as proposed.

REASONED JUSTIFICATION. The new subchapter is necessary to implement Section 20 of Senate Bill (SB) 1731, as enacted by the 80th Legislature, Regular Session, effective September 1, 2007. The new subchapter is also necessary to facilitate the study of network adequacy by the Advisory Committee on Health Network Adequacy (Advisory Committee). SB 1731 enacts new Insurance Code §1456.0065, which requires the Commissioner of Insurance to establish an advisory committee to study the facility-based provider network adequacy of health benefit plans. Pursuant to SB 1731, Section 20, the Commissioner must require by rule that each health benefit plan issuer subject to Insurance Code Chapter 1456 submit information to the Department concerning the use of non-network providers by health benefit plan insureds and enrollees and the payments made to those providers. The adopted sections implement the information and data collection requirement in SB 1731, Section 20, and facilitate the study of health network adequacy mandated by the Insurance Code §1456.0065.

In accordance with the Insurance Code §1456.0065, the Commissioner appointed the Advisory Committee to study facility-based provider network adequacy. The Commissioner finalized the appointments on November 28, 2007, in Commissioner's Order No. 07-1062. The Advisory Committee membership includes physician representatives; hospital representatives; health benefit plan representatives; and association representatives representing physicians, hospitals, and health benefit plans. This membership accords with the membership requirements mandated in the Insurance Code §1456.0065. The Advisory Committee has thus far met on December 10, 2007; January 24, 2008; February 26, 2008; April 17, 2008; May 22, 2008; August 13, 2008; and November 14, 2008. The adopted sections incorporate the guidance provided by the Advisory Committee members. Additionally, consistent with the Insurance Code §1212.002(b), the Department apprised the Technical Advisory Committee on Claims Processing of progress regarding the proposal for this subchapter during that committee's July 30, 2008 meeting. The Department also invited comment from members of the Technical Advisory Committee on Claims Processing. The Technical Advisory Committee on Claims Processing is appointed by the Commissioner pursuant to the Insurance Code §1212.001. Pursuant to §1212.002(a) of the Insurance Code, the committee is to advise the Commissioner on technical aspects of coding of health care services and claims development, submission, processing, adjudication, and payment, as well as the impact on those processes of contractual requirements and relationships, including relationships among employers, health benefit plans, insurers, health maintenance organizations, preferred provider organizations, electronic clearinghouses, physicians and other health care providers, third-party administrators, independent physician associations, and medical groups. Section 1212.002(b) of the Insurance Code requires the Commissioner to consult with the technical advisory committee before adopting any rule related to the subjects described by §1212.002(a).

On July 11, 2008, the Department posted an informal draft proposal of Subchapter LL on its website and invited public comment. On October 3, 2008, the proposed new subchapter was published in the *Texas Register.* The Department held a public hearing on the rule proposal on October 14, 2008. The Department received both written comments on the published proposal and oral comments at the public hearing. In response to comments, the Department has changed some of the proposed language in the text of the rule as adopted. The Department has also made non-substantive editorial changes necessary for clarification and enhancement of the user-friendliness of the rule. None of the changes made to the proposed text, either as a result of comments or as a result of necessary clarification, materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

One change has been made to the proposed text as a result of comments. Section 21.4604(a) as adopted is changed to provide that the information and data as required in this subchapter must be submitted to the Department by no later than February 27, 2009. The proposal required that the information and data be submitted on or before January 9, 2009. One commenter objected to the proposed January 9, 2009 deadline and proposed an alternative submission deadline of 60 days after adoption of the final rule. While the proposed January 9 submission deadline is no longer viable due to the effective date of this adoption, the Department does not agree with the commenter's proposed 60-day deadline. The information and data collected pursuant to this subchapter will serve to advise the 81st Legislature, which begins on January 13, 2009, and others concerning the existence, scale, and possible sources of issues pertaining to the use of non-network providers and network adequacy and should be made available earlier in the legislative session than would be possible if submitted 60 days after the adoption of the rules. The Department believes that a February 27, 2009 submission deadline will provide health benefit plan issuers with sufficient time from the effective date of the rule to collect and submit the required information and data. Additionally, because much of the information required for submission by the health benefit plan issuers should be readily available to the health benefit plan issuers, this revised timeframe should allow for accurate collection and reporting of the required information and data. The Department is also of the opinion that the February 27, 2009 submission deadline will provide adequate time for the Legislature to review and utilize the information and data.

The Department has determined that it is necessary to make a clarification change to §21.4602 as proposed. Section 21.4602 as adopted contains a new subsection (d) to clarify that the rule does not apply to issuers that provide coverage solely for dental, vision, or behavioral health care. This clarification is necessary to eliminate any ambiguity in the non-applicability of the rule to issuers that provide coverage solely for dental, vision, or behavioral health care. The collection of information and data from these issuers would not provide stakeholders with relevant data and therefore, is not necessary for the mandated study of facility-based provider network adequacy of health benefit plans by the Advisory Committee. The proposed rules were not intended to apply to these types of issuers.

Also, the Department has made minor editorial changes to §21.4603(a) and (b), §21.4604(a), and §21.4605(a) and (b) as adopted. References to Form No. LHL608 (Health Benefit Plan/Provider Contracting Practices Survey) and Form No. LHL609 (Health Benefit Plan Issuer Hospital Grid) have been reformatted to specify the form number first followed by the form

title. These editorial changes are necessary to enhance the user-friendliness of the rules.

The following is a section-by-section summary of the adopted sections and the reasons for the adoption.

Adopted §21.4601 is necessary to clarify the purpose of the subchapter. The subchapter prescribes the requirements for the information and data to be submitted to the Department concerning the use of non-network providers by insureds and enrollees of health benefit plans as required by Section 20 of SB 1731. The subchapter also facilitates the study of facility-based provider network adequacy of health benefit plans by the Advisory Committee appointed by the Commissioner as required by Insurance Code §1456.0065.

Adopted §21.4602 is necessary to address the applicability of the subchapter. Pursuant to SB 1731, Section 20, the Commissioner must require by rule that each health benefit plan issuer subject to the Insurance Code Chapter 1456 submit information to the Department concerning the use of non-network providers by health benefit plan insureds and enrollees and the payments made to those providers. The adopted applicability accords with the Insurance Code §1456.002. Adopted §21.4602(a) specifies various types of issuers that provide benefits for medical or surgical expenses to whom the rule applies. Adopted §21.4602(b) clarifies the applicability of the adopted information and data reporting requirements to governmental employee plans. This clarification is necessary to eliminate any ambiguity in the applicability of the rule to governmental employee plans. "Governmental employee plans" means certain of those health benefit plans under Title 8, Health Insurance and Other Health Coverages, Subtitle H, Health Benefits and Other Coverages for Governmental Employees, specifically Insurance Code Chapters 1551, 1575, 1578, 1579, and 1601. Insurance Code §1456.0065 requires the health care network adequacy advisory committee to study facility-based provider network adequacy of "health benefit plans." Insurance Code §1456.0065 broadly defines "health benefit plan" to mean "an insurance policy or a contract or evidence of coverage issued by a health maintenance organization or an employer or employee sponsored health plan." Including governmental employee plans in this study is consistent with the mandate in Insurance Code §1456.0065. Adopted §21.4602(c) is necessary to clarify that the adopted rule does not apply to Medicaid and state child health insurance plans. Adopted §21.4602(d) clarifies that the adopted rule does not apply to an issuer that provides coverage solely for dental, vision, or behavioral health care. This clarification is necessary to eliminate any ambiguity in the inapplicability to these types of issuers.

Adopted §21.4603(a) addresses the requirement to collect the requested information and data. Adopted §21.4603(a) is necessary to require health benefit plan issuers to collect the underlying data necessary for submission of all information specified in Form No. LHL608 (Health Benefit Plan/Provider Contracting Practices Survey). Form No. LHL608 (Health Benefit Plan/Provider Contracting Practices Survey) is adopted by reference in §21.4605(a). Adopted §21.4603(a) is also necessary to require health benefit plan issuers to collect the underlying data necessary for submission of all information specified in Form No. LHL609 (Health Benefit Plan Issuer Hospital Grid). Form No. LHL609 (Health Benefit Plan Issuer Hospital Grid) is adopted by reference in §21.4605(b). Adopted §21.4603(b) is necessary to address the time periods for which the information and data is to be provided. It provides that the 12-month reporting period for the information and data requested in Form No. LHL608 (Health Benefit Plan/Provider Contracting Practices Survey) is calendar year 2007. Adopted §21.4603(b) further provides that the enrollment data required in Form No. LHL608 (Health Benefit Plan/Provider Contracting Practices Survey) and Form No. LHL609 (Health Benefit Plan Issuer Hospital Grid) for private market plans, governmental employee plans, and Local Government Code Chapter 172 risk pools is for the total number of lives covered under the plans as of September 1, 2008. Finally, adopted §21.4603(b) provides that the information and data requested in Form No. LHL608 (Health Benefit Plan Issuer Hospital Grid) is to be based on the health benefit plan issuer's current practices and network arrangements.

Adopted §21.4604 addresses the requirements and deadlines for the submission of the requested information and data. Adopted §21.4604(a) is necessary to specify the deadline for submission of the requested information and data. It requires that each health benefit plan issuer subject to the rules submit to the Department the information and data required in Form No. LHL608 (Health Benefit Plan/Provider Contracting Practices Survey) and Form No. LHL609 (Health Benefit Plan Issuer Hospital Grid) by no later than February 27, 2009. This deadline is necessary to allow time for review of the information and data by the Advisory Committee, the Legislature, the Governor, Lieutenant Governor, Speaker of the State House of Representatives, the Commissioner, and the chairs of the standing committees of the State Senate and House of Representatives that have primary jurisdiction over health benefit plans, as provided for in Insurance Code §1456.0065. Adopted §21.4604(b) is necessary to specify the procedures for electronic filing of the required information and data.

Adopted §21.4605 is necessary to adopt by reference the two forms to be used in reporting the information and data required in the new subchapter. Adopted §21.4605(a) adopts by reference Form No. LHL608, entitled Health Benefit Plan/Provider Contracting Practices Survey. The survey form is necessary to require health benefit plan issuers to submit information in narrative responses regarding current contracting practices relating to the use of in-network and non-network providers by health benefit plan enrollees and the payments made to those providers. The survey form is also necessary to require health benefit plan issuers to submit information for both in-network and non-network claims for facility-based physicians for calendar year 2007. Specifically, the survey form requires health benefit plan issuers to report total claim units, total billed amount, and total allowed amount for each type of facility-based physician listed on the form (Anesthesiologist, Pathologist, Radiologist, Neonatologist, and Emergency Department Physician).

Additionally, Form No. LHL608 (Health Benefit Plan/Provider Contracting Practices Survey), is necessary to define the terms used in reporting the information and data required in the form and to provide detailed instructions concerning the information and data to be reported. The definitions are set forth in Instruction No. 7 of the form. The terms "in-network" and "non-network" are defined consistent with common usage in the health insurance and medical provider communities. The definition of the term "balance billing" excludes patient financial responsibility amounts attributable to copayments, coinsurance or deductible amounts for the purpose of eliciting information more specifically related to the issue of network adequacy. The questions in the survey form were developed with input and assistance from the Advisory Committee. The questions are designed to allow for a free form narrative response and to elicit information regarding

the methods and means for identifying facility-based providers at in-network facilities and how health benefit plan issuers contract with those providers. During the development of the survey questions, Advisory Committee members particularly focused on the need to obtain information regarding general contracting practices between health benefit plan issuers and health care providers while respecting the need to maintain the confidential nature of specific contracting practices. The Department therefore drafted the questions to obtain general information that will support the Advisory Committee's statutory mandate to study facility-based provider network adequacy without infringing upon issuer or provider interests in maintaining the confidentiality of proprietary information. Adopted §21.4605(a) is also necessary to provide a link for accessing the form on the Department's website.

Adopted §21.4605(b) adopts by reference Form No. LHL609, entitled Health Benefit Plan Issuer Hospital Grid. The grid form is necessary to enable health benefit plan issuers to submit required information concerning the information and data identifying which hospitals are in-network facilities for the health benefit plan issuer and which in-network physicians or physician practices groups have clinical privileges at those hospitals. The Department selected 281 hospitals for which information is requested in the grid form. These hospitals include every acute care hospital in the state with 100 or more beds and 20 percent of smaller acute care hospitals, as identified by the Texas Department of State Health Services. Not every hospital in the state is included in the survey. The selected hospitals constitute a representative sample that will enable the Department to collect information and data concerning hospitals ranging from the very large to the smaller hospitals. The Department is of the opinion that the hospitals included in the survey will provide the information and data necessary to identify whether there are disparate problems in insureds and enrollees being able to access in-network providers as a result of the size or location of the facility. The grid form also defines the terms used in reporting the information and data required in the form and provides detailed instructions concerning the information and data to be reported. Adopted §21.4605(b) is also necessary to provide a link for accessing the form on the Department's website.

HOW THE SECTIONS WILL FUNCTION. Adopted §21.4601 outlines the purpose of the subchapter.

Adopted §21.4602 addresses the applicability and inapplicability of the new subchapter. It specifies the types of health benefit plans, issuers, programs, and other entities to which the subchapter does and does not apply. Adopted §21.4603 addresses the requirement to collect the requested information and data and the time periods for which the information and data is to be provided. Adopted §21.4603(a) requires health benefit plan issuers to collect the underlying data necessary for submission of all information specified in Form No. LHL608 (Health Benefit Plan/Provider Contracting Practices Survey) and Form No. LHL609 (Health Benefit Plan Issuer Hospital Grid). These two forms are adopted by reference in §21.4605(a) and (b) respectively. Adopted §21.4603(b) addresses the time periods for which the information and data is to be provided. It provides that: (i) the 12-month reporting period for the information and data requested in Form No. LHL608 (Health Benefit Plan/Provider Contracting Practices Survey), including the data for the in-network and non-network claims for facility-based physicians, is calendar year 2007; (ii) the enrollment data required in Form No. LHL608 (Health Benefit Plan/Provider Contracting Practices Survey) and Form No. LHL609 (Health Benefit Plan Issuer Hospital Grid) for private market plans, government employee plans, and Local Government Code Chapter 172 risk pools, is for the total number of lives covered under the plans as of September 1, 2008; and (iii) the information and data requested in Form No. LHL609 (Health Benefit Plan Issuer Hospital Grid) is to be based on the health benefit plan issuer's current practices and network arrangements.

Adopted §21.4604 addresses the requirements and deadlines for the submission of the requested information and data. New §21.4604(a) specifies the deadline for the submission of the required information and data. Each health benefit plan issuer subject to the rules is required to submit to the Department the information and data required in Form No. LHL608 and Form No. LHL609 by no later than February 27, 2009. Adopted §21.4604(b) specifies the procedures for electronic filing of the required information and data.

In adopted §21.4605, the two forms to be used in reporting the information and data required by the rule are adopted by reference. Adopted §21.4605(a) adopts by reference Form No. LHL608, entitled Health Benefit Plan/Provider Contracting Practices Survey. Health benefit plan issuers must utilize this form to submit summary company identification and contact information. The issuers must also provide general information in narrative responses regarding current contracting practices relating to the use of in-network and non-network providers by health benefit plan enrollees and the payments made to those providers. Health benefit plan issuers must also use this form to submit individual health benefit plan issuer information for both in-network and non-network claims for facility-based physicians for calendar year 2007. The form contains detailed instructions for completion. Adopted §21.4605(a) also provides a link for accessing the form on the Department's website.

Adopted §21.4605(b) adopts by reference Form No. LHL609, entitled Health Benefit Plan Issuer Hospital Grid. Health benefit plan issuers must provide the same company identification and contact information required in Form No. LHL608 (Health Benefit Plan/Provider Contracting Practices Survey). Health benefit plan issuers must complete this form, which contains detailed instructions. Health benefit plan issuers must submit information regarding which hospitals are in-network facilities. For those hospitals, information must be submitted regarding which in-network physician or physician practice groups have clinical privileges. Adopted §21.4605(b) also provides a link for accessing the form on the Department's website.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

General Comments

Comment: One commenter recommends that the Department limit the collection of data by rule to the data required by SB 1731. The commenter asserts that the collection and reporting of narrative responses regarding contracting practices and the hospital grid information required to be submitted on Form No. LHL608 (Health Benefit Plan/Provider Contracting Practices Survey) and Form No. LHL609 (Health Benefit Plan Issuer Hospital Grid) are not required by SB 1731. The commenter notes that SB 1731, Section 20, requires the Department to adopt rules requiring each health benefit plan to provide data on the use of non-network providers. The commenter states that while it is the Department's prerogative to collect the information by rule, much of that data has been collected through the Advisory Committee on Health Network Adequacy (the Advisory Committee). The commenter also asserts that the voluntary nature of sub-

missions of crucial data by providers to the Department is an ongoing issue faced by the Advisory Committee. The commenter states that the organization he represents has no real, specific objection to the information required for collection and reporting in the proposed rule.

Agency Response: The Department is not requesting any information or data that is not authorized by SB 1731. The narrative information requested by the rule concerns contracting practices and the availability of in-network provider facility-based providers. The Department believes that there is authority to request such information and that it is appropriate to include the collection of this information in the rule. Section 20 of SB 1731 mandates the Commissioner by rule to require each health benefit plan issuer subject to Insurance Code Chapter 1456 to submit information to the Department concerning the use of non-network providers by health benefit plan insureds and enrollees and the payments made to those providers. Section 20 further directs the Commissioner to work with the Advisory Committee to develop the data collection and evaluate the information collected. Insurance Code §1456.0065 requires the Advisory Committee to study facility-based provider network adequacy of health benefit plans. Inclusion of the collection and reporting of narrative responses regarding contracting practices and the hospital grid information required to be submitted on Form No. LHL608 (Health Benefit Plan/Provider Contracting Practices Survey) and Form No. LHL609 (Health Benefit Plan Issuer Hospital Grid) is necessary to fulfill the Department's and the Advisory Committee's responsibilities under Section 20 of SB 1731 and the Insurance Code §1456.0065. A health benefit plan issuer's contracting practices and the availability of in-network facility-based providers directly affect and inform network adequacy and, as a result, the use of non-network providers. Therefore, the narrative information will assist the Advisory Committee to more fully understand facility-based provider network adequacy of health benefit plans and will facilitate the development of a more comprehensive study. The Department acknowledges that some health benefit plan issuers have already provided similar information concerning availability of in-network facility-based providers to the Advisory Committee on a voluntary basis. However, not all health benefit plan issuers have provided that voluntary information. Inclusion of that information in this data collection will result in overall information of a more comprehensive and timely nature. The additional information will ultimately better serve the Committee, the Legislature, and other state officials to whom the Committee will report. With regard to the commenter's assertion concerning submissions by providers, the Department does not agree that the lack of departmental authority to mandate submission of information and data by providers constitutes a valid basis for limiting its collection of information and data from health benefit plan issuers. The lesser availability of information from providers does not diminish the importance of the information and data that health benefit plan issuers are required to provide under this rule.

Comment: One commenter recommends that the rules specify that the data collection is a one-time occurrence and include an expiration date. The commenter notes that the proposal specifies in the preamble that the data collection is a one-time occurrence. In the alternative, the commenter suggests that the rule be put on the Department's calendar for repeal.

Agency Response: The commenter is correct that this subchapter requires a one-time data submission for each adopted form. Adopted §21.4604(a) specifies a single submission date for both of the forms. Section 21.4604(a) as adopted provides that each health benefit plan issuer to whom the subchapter applies must submit to the Department the information and data required in Form No. LHL608 and Form No. LHL609 by no later than February 27, 2009. The Department therefore disagrees that the specific inclusion of an expiration date is necessary. However, pursuant to the statutory mandate in Government Code §2001.039, the Department will consider the repeal of the rule as part of its periodic ongoing review of existing agency rules.

Comment: A commenter requests that the Department seek a memorandum of understanding with the Department of State Health Services and the Texas Medical Board in order to allow the Department of Insurance to collect information and data from hospitals and providers, respectively. The commenter also asserts that, consistent with the purpose of the Advisory Committee on Network Adequacy, the collection of information from other stakeholders would better inform the judgments of the Legislature.

Agency Response: SB 1731 does not authorize or require the Department to enter into any memorandum of understanding relating to the collection of information and data from other entities not specified in SB 1731 or on any other issues relating to the implementation of Section 20 of SB 1731. In the process of collecting information, stakeholders of the Advisory Committee on Health Network Adequacy, which includes hospitals and providers, have voluntarily provided information and data to the committee. While the Department agrees that memorandums of understanding with other state regulatory agencies are helpful in many instances, the Department believes that the Section 20 mandate may be fully implemented without such memorandums.

Comment: A commenter supports adoption of the rules as proposed and expresses appreciation for the work of Department staff.

Agency Response: The Department appreciates the commenter's statement of support.

§21.4604(a). Submission of Information and Data.

Comment: One commenter objects to the proposed submission requirement in §21.4604(a) that requires the information and data to be reported on or before January 9, 2009. The commenter proposes an alternative submission deadline of 60 days after adoption of the final rule. The commenter specifies the following reasons for the objection and alternative deadline proposal: (i) the proposed submission date is shortly after the winter holiday period when staff is less available for additional work; (ii) the proposed submission deadline falls within an already busy reporting period; and (iii) the Department will have already provided initial data to the Legislature in its report, which is required by SB 1731 to be submitted in December.

Agency Response: Section 21.4604(a) as adopted requires submission of the information and data as required in this subchapter by no later than February 27, 2009. The proposed January 9 submission deadline is no longer viable due to the effective date of this adoption. The Department does not agree with the commenter's proposed 60-day deadline for the following reasons. The information and data collected pursuant to this subchapter will serve to advise the 81st Legislature, which begins on January 13, 2009, and others concerning the existence, scale, and possible sources of issues pertaining to the use of non-network providers and network adequacy and should be made available earlier in the legislative session than would be possible if submitted 60 days after the adoption of the rules. The Department believes that the February 27, 2009 deadline will provide health

benefit plan issuers with sufficient time from the effective date of the rule to collect and submit the required information and data. Because much of the information required for submission by the health benefit plan issuers should be readily available to the health benefit plan issuers, this timeframe should allow for accurate collection and reporting of the required information and data. The Department is also of the opinion that the February 27, 2009 deadline will provide time for the Legislature to review and utilize the information and data. Additionally, the Department's submission of initial data to the Legislature does not alter the importance of the additional information to be collected as a result of this subchapter.

Form No. LHL608 (Health Benefit Plan/Provider Contracting Practices Survey) Instruction Nos. 9 and 10

Comment: A commenter states that Instruction No. 10 of the Form No. LHL608 (Health Benefit Plan/Provider Contracting Practices Survey) appears to allow a plan that insures or administers governmental employee plans to include that information in its aggregate figures and indicate which plans or pools are included. The commenter asserts that separate reporting on behalf of such pools would be a substantial burden and requests clarification of whether the commenter's interpretation is correct. Another commenter states that its organization is pleased that governmental plans and Chapter 172 Risk Pools will have flexibility in determining the most appropriate manner in which to submit the required reports.

Agency Response: The Department clarifies that the submission of separate reports for a health benefit plan issuer and the governmental employee plans or risk pools created under Local Government Code Chapter 172 that the issuer administers, while permissible, are not required. As described in instruction Nos. 9 and 10 on Form No. LHL608 (Health Benefit Plan/Provider Contracting Practices Survey), a governmental employee plan or a risk pool created under Local Government Code Chapter 172 must either independently submit the report form or authorize and require the entity administering the plan or risk pool to submit the form on its behalf. If reporting on behalf of a governmental employee plan or a risk pool, the reporting issuer must identify the name of the plan or risk pool and the total number of lives for that plan or risk pool as of September 1, 2008. The instructions do require identification of each governmental plan or risk pool and submission of the total lives covered under each governmental plan and/or risk pool. Responses to the actual survey questions and data collection in Form No. LHL608 (Health Benefit Plan/Provider Contracting Practices Survey), however, may be submitted as aggregate information and data on behalf of both the issuer's plans and those plans or pools which it administers. The Department appreciates the commenter's supportive comment.

Form No. LHL608 (Health Benefit Plan/Provider Contracting Practices Survey) Question Nos. 7 - 13

Comment: A commenter supports adoption of Question Nos. 7 - 13 of Form No. LHL608 (Health Benefit Plan/Provider Contracting Practices Survey) without change because the questions address information about the out-of-network coverage insureds receive for their premium dollar. The commenter asserts that the questions will result in information on the claim settlement practice used by carriers in Texas that is necessary for consideration by legislators, the Department, and stakeholders. Specifically, the commenter asserts that the responses to these questions are necessary to clarify the relationship between amounts covered and amounts billed by the physician or other health care provider. The commenter further asserts that the questions are necessary to demonstrate the relationship between an insurer's actions to limit its financial risk and the loss suffered by an insured. Finally, the commenter asserts that the questions are necessary for evaluation of the value of the out-of-network benefit coverage in comparison to premium payments.

Agency Response: The Department appreciates the commenter's support. Question Nos. 7 - 13 are adopted without change.

Form No. LHL608 (Health Benefit Plan/Provider Contracting Practices Survey) Question No. 14

Comment: One commenter supports inclusion of Question No. 14 of Form No. LHL608 (Health Benefit Plan/Provider Contracting Practices Survey) but suggests modification of the question into two parts as follows: (a) Does the health benefit plan issuer limit some of its facility-based physician contract offers to only those services provided to patients receiving inpatient or outpatient services at the facility? If yes, specify those provider types that receive such offers. (b) Does the health benefit plan issuer offer to some physicians practicing pathology, radiology, anesthesia, neonatology, or emergency medicine an exclusive contract for services that are performed outside hospitals? The commenter asserts that many procedures are performed at hospitals on an outpatient basis and that a technical interpretation of the questions will result in exclusion of information related to contracting for those services if the question is not modified to specifically include them. The commenter asserts that the second part of its suggested language is necessary to identify arrangements for exclusive provision of services performed outside of hospitals, such as services performed at ambulatory surgical centers or laboratories. According to the commenter, these exclusive arrangements introduce possible increases in patient financial responsibility and impede quick access to on-site services. The commenter further asserts that information concerning the offer of contracts that do not encompass the full spectrum of a physician's services is important for full appreciation of the factors considered by physicians and healthcare providers in deciding whether to participate in a network.

Agency Response: The Department disagrees with the suggested modification of Question No. 14 in Form No. LHL608 (Health Benefit Plan/Provider Contracting Practices Survey). The proposed language in Question No. 14 only requires disclosure of whether some contracts offered by the health benefit plan issuer to facility-based physicians are limited to provision of inpatient services. Expanding the scope of the question to services not specifically contemplated in connection with this question would deny other stakeholders adequate notice and opportunity to comment on the new requirement. It would therefore constitute a substantive change to the proposed rule and require publication of the proposed new requirement and a 30-day comment period. Further, identification of whether health benefit plan issuers offer contracts to some facility-based providers that are limited to inpatient services will still provide information about factors that may be considered by physicians and health care providers in deciding whether to participate in a network. Finally, the Department disagrees that it is necessary to identify whether a health benefit plan issuer offers some physician's exclusive contracts for pathology, radiology, anesthesia, neonatology, or emergency medicine services performed outside of the hospital in order to determine factors that affect a physician's decision about whether to participate in a network. A physician's consideration of the limited spectrum

of services included in a proffered contract will likely affect the physician's determination about participation regardless of the health benefit plan issuer's motivation for offering the more limited contract.

Form No. LHL608 (Health Benefit Plan/Provider Contracting Practices Survey) Question No. 17

Comment: One commenter requests that, in light of the proposed submission deadlines, the Department in the instructions for Question No. 17 of Form No. LHL608 (Health Benefit Plan/Provider Contracting Practices Survey) consider removing the requirement to exclude from submitted claim information those claims paid as a secondary payor. According to the commenter, the proposed requirement will make programming more complex for some health benefit plan issuers.

Agency Response: The Department declines to change the requirement excluding claims paid on a secondary plan basis. This determination is based on careful consideration of this issue and discussions with the Advisory Committee. The Department's position is that limiting the submitted claims information to those claims paid on a primary plan basis is appropriate because it will produce information regarding the use of in-network and out-of-network facility-based physicians with respect to the health benefit plan issuers that are submitting the information. The availability of the primary plan's in-network physicians is likely to be a greater consideration in an insured's or enrollee's decisions about where to obtain health care than is the availability of in-network physicians under a secondary plan. While separating secondary claims may require additional resources for some health benefit plan issuers, doing so will improve data validity. Further, each health benefit plan issuer may have characteristics that are unique to its particular information technology processes and systems. During discussions of the Advisory Committee and in comments on the informal draft of this rule published on the Department's website, a different health benefit plan issuer indicated that it typically did not include payments made on a secondary basis in its reports and sought confirmation that such exclusion would be appropriate for submission of information in response to this question. Because there is likely a closer relationship between a plan's network availability and claims paid by that health benefit plan issuer on a primary plan basis, the Department is of the opinion that requiring the exclusion of claims paid on a secondary basis is necessary for the consistency and integrity of the data.

Comment: One commenter requests clarification regarding the meaning of "total claims unit" as defined in the instructions for Question No. 17 of Form No. LHL608 (Health Benefit Plan/Provider Contracting Practices Survey). The commenter states that according to industry nomenclature the term refers to units within a claim rather than the claim itself.

Agency Response: The Department agrees that the term "total claim units" refers to individual units within a claim form in accord with industry usage. A single claim form may include billing for multiple procedural codes. Claims data should be reported on a line item basis. That means that each claim unit is reported separately rather than aggregated as a single claim where submitted together on one claim form. For example, if a claim form includes three claims units, then each claim unit will be reported as a separate claim unit.

Comment: A commenter requests clarification regarding whether reprocessed claims should be reported in the claim information for Question No. 17 of Form No. LHL608 (Health Benefit Plan/Provider Contracting Practices Survey).

Agency Response: Claims information resulting from the reprocessing of claims after calendar year 2007 is not required to be reported for Question No. 17. Adopted §21.4603 requires claims data in Form No. LHL608 (Health Benefit Plan/Provider Contracting Practices Survey) to be submitted for calendar year 2007. Adopted §21.4603 requires that all applicable claims for calendar year 2007 be reported. If a claim was reprocessed in calendar year 2007, however, then the reprocessed claim should be reported and the initial claim should not be reported except to the extent that information concerning individual claim units remained unchanged as a result of the reprocessing.

Comment: One commenter suggests that the reporting elements in Question No. 17 in Form No. LHL608 be revised to include the total amount paid for both in-network and out-of-network claims. While the commenter expresses strong support for inclusion of Question No. 17 concerning claim information for facility-based physicians in calendar year 2007, the commenter states that the additional information would provide legislators and interested stakeholders with an idea of exactly the amount of financial risk that is placed upon Texans who have purchased an insurance policy.

Agency Response: The Department appreciates the commenter's support. However, the Department declines to adopt an additional reporting requirement of "Total Amount Paid" for Question No. 17. The Department does not agree that the additional information suggested by the commenter will be helpful enough to stakeholders to require health benefit plan issuers to report this data. The Advisory Committee and the Department specifically discussed the inclusion of a "Total Amount Paid" field in Question No. 17 of the Health Benefit Plan/Provider Contracting Practices Survey and determined to not include such a field for several reasons. First, deductibles, copayments, and coinsurance terms can vary widely among individual plans depending on the cost to the employer, insured, or enrollee. For example, a health benefit plan issuer may offer both high deductible and low deductible plans. Second, application of these varying contractual terms to the health benefit plan issuer's liability for payment would make aggregated "Total Amount Paid" data potentially misleading and hamper its usefulness as an analytic tool. For example, if half of a benefit plan issuer's insureds or enrollees had a 20% coinsurance requirement, but the other half of its insureds or enrollees had a 50% coinsurance requirement, the aggregated Total Amount Paid would not provide meaningful data on what facility-based physicians receive per claim. If Question No. 17 included submission of "Total Amount Paid," that number would only reflect the portion paid to health providers by the health benefit plan issuers and would not reflect patient financial responsibility amounts. Third, this data collection is focused on a macro level view of the total claims experience for facility-based physicians rather than details at the level of individual claims. Fourth, adopted Question No. 17 does require health benefit plan issuers to report both total billed amounts and total allowed amounts for applicable claims. The difference between those figures will yield the potential financial liability of the insured or enrollee beyond the variable patient financial responsibility amounts attributable to plan design.

Form No. LHL609 (Health Benefit Plan Issuer Hospital Grid)

Comment: One commenter requests clarification that good faith production of information concerning which hospital-based provider groups are under contract at network hospitals is

acceptable. A commenter states that health benefit plan issuers would have to rely on the cooperation of hospitals to furnish accurate information concerning which hospital-based provider groups are under contract at network hospitals to accurately complete the information required for submission on the Form No. LHL609 (Health Benefit Plan Issuer Hospital Grid). The commenter asserts that this is important to note because of the potential for disciplinary action against health benefit plan issuers.

Agency Response: The Department does not believe that it is necessary to make additional changes to the instructions for Form No. LHL609 (Health Benefit Plan Issuer Hospital Grid). Instruction No. 9 of Form No. LHL609 expressly recognizes that health benefit plan issuers may not have full and complete information for some hospitals and should, in those cases, provide information to the best of its ability. The plan issuer should also include any limitations and assumptions made in providing a response.

Comment: A commenter inquires whether reporting entities may identify and report the information concerning hospitals in Form No. LHL609 (Health Benefit Plan Issuer Hospital Grid) on the basis of the hospitals' tax ID or NPI number. The commenter states that different spellings or use of abbreviations in identifying hospitals require a manual process of information retrieval. The commenter states that use of the NPI number or tax ID results in consistency.

Agency Response: Form No. LHL609 (Health Benefit Plan Issuer Hospital Grid) requires submission of information based upon a hospital's name rather than by the hospitals' tax ID or NPI number or any other identifier. Therefore, information should not be reported solely on the basis of an individual NPI number or tax identification number. This instruction is based on the Department's discussion with the Advisory Committee during meetings of the committee. Advisory Committee members advised the Department that a single hospital may have multiple NPI numbers and possibly multiple tax identification numbers for different divisions of the hospital. Each health benefit plan issuer is required in Form No. LHL609 (Health Benefit Plan Issuer Hospital Grid) to identify the appropriate information concerning each hospital identified in the grid. The health benefit plan issuer must identify each hospital's status as in-network or non-network and provide corresponding information concerning in-network physicians or physician groups who have clinical privileges with the hospital as hospital-based physicians. The information required in Form No. LHL609 (Health Benefit Plan Issuer Hospital Grid) with respect to hospitals is the same information that an insured or enrollee of a health benefit plan should be able to obtain upon request. It is likely that the insureds or enrollees of a health benefit plan issuer would ask for this information by providing the name of the hospital to the issuer. Further, it is unlikely that an insured or enrollee would know the NPI number or taxpayer identification number of the hospital.

Comment: One commenter supports adoption of the Form No. LHL609 (Health Benefit Plan Issuer Hospital Grid) as proposed.

Agency Response: The Department appreciates the support for Form No. LHL609 (Health Benefit Plan Issuer Hospital Grid). The proposed form is adopted without changes.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL. For: Office of Public Insurance Counsel; Texas Association of Counties.

For with changes: Texas Association of Health Plans; Texas Medical Association.

Against: None.

STATUTORY AUTHORITY. The new sections are adopted under Section 20 of SB 1731, as enacted by the 80th Legislature, Regular Session, effective September 1, 2007, and the Insurance Code §1456.0065, §1212.002, and §36.001. Section 20(a) of SB 1731 provides that the Commissioner shall by rule require each health benefit plan issuer subject to Insurance Code Chapter 1456 to submit information to the Department concerning the use of non-network providers by health benefit plan enrollees and the payments made to those providers. The Commissioner is required to work with the network adequacy study group to develop the data collection and evaluate the information collected. Section 20(b) of SB 1731 provides that an issuer that fails to submit data as required under Section 20 is subject to an administrative penalty under the Insurance Code Chapter 84. Further, each date the issuer fails to submit the data as required is a separate violation for purposes of penalty assessment. Section 1456.0065 requires the Commissioner to appoint an advisory committee to study facility-based provider network adequacy of health benefit plans. The Advisory Committee is required to be composed of one or more physician representatives; one or more hospital representatives; one or more health benefit plan representatives to equal the total number of physician and hospital representatives; and one representative from each association representing physicians, hospitals, and health benefit plans. The Advisory Committee is required to advise periodically and not later than December 1, 2008, the Governor, Lieutenant Governor, Speaker of the House of Representatives, Commissioner, and the Chairs of the standing committees of the Senate and House of Representatives that have primary jurisdiction over health benefit plans, of its findings. Chapter 1212 of the Insurance Code provides for the appointment and operation of the Technical Advisory Committee on Claims Processing. Section 1212.002 requires the Commissioner to consult with the technical advisory committee before adopting any rule related to the coding of health care services and claims development, submission, processing, adjudication, and payment, as well as the impact on those processes of contractual requirements and relationships, including relationships among employers, health benefit plans, insurers, health maintenance organizations, preferred provider organizations, electric clearinghouses, physicians and other health care providers, third-party administrators, independent physician associations and medical groups. Section 36.001 authorizes the Commissioner of Insurance to 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.

§21.4602. Applicability.

(a) Pursuant to section 20 of SB 1731 and the Insurance Code §1456.002(a), this subchapter applies to issuers of:

(1) any health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage that is offered by:

(A) an insurance company;

(B) a group hospital service corporation operating under the Insurance Code Chapter 842;

(C) a fraternal benefit society operating under the Insurance Code Chapter 885;

(D) a stipulated premium company operating under the Insurance Code Chapter 884;

(E) a health maintenance organization operating under the Insurance Code Chapter 843;

(F) a multiple employer welfare arrangement that holds a certificate of authority under the Insurance Code Chapter 846; or

(G) an approved nonprofit health corporation that holds a certificate of authority under the Insurance Code Chapter 844; or

(2) any health benefit plan that provides health and accident coverage through a risk pool created under Chapter 172, Local Government Code, notwithstanding §172.014, Local Government Code, or any other law.

(b) Pursuant to section 20 of SB 1731 and the Insurance Code §1456.002(b), this subchapter applies to any person to whom a health benefit plan contracts to process or pay claims, to obtain the services of physicians or other providers to provide health care services to insureds and enrollees, or to issue verifications or preauthorizations, including:

(1) a basic coverage plan under the Insurance Code Chapter 1551;

(2) a basic plan under the Insurance Code Chapter 1575;

(3) a basic plan under the Insurance Code Chapter 1578;

(4) a primary care coverage plan under the Insurance Code Chapter 1579; and

(5) a basic coverage plan under the Insurance Code Chapter 1601.

(c) Pursuant to the Insurance Code §1456.002(c), this subchapter does not apply to:

(1) Medicaid managed care programs operated under the Government Code Chapter 533;

(2) Medicaid programs operated under the Human Resources Code Chapter 32; or

(3) the state child health plan operated under the Health and Safety Code Chapters 62 or 63.

(d) This subchapter does not apply to an issuer that provides coverage solely for dental, vision, or behavioral health care.

§21.4603. Requirement to Collect Information and Data.

(a) Each health benefit plan issuer identified in §21.4602(a) and (b) of this subchapter (relating to Applicability) shall collect the information and data specified in Form No. LHL608 (Health Benefit Plan/Provider Contracting Practices Survey) that is adopted by reference in §21.4605(a) of this subchapter (relating to Report Forms) and in Form No. LHL609 (Health Benefit Plan Issuer Hospital Grid) that is adopted by reference in §21.4605(b) of this subchapter and shall prepare and file information and data in accordance with the requirements in §21.4604 of this subchapter (relating to Submission of Information and Data).

(b) The 12-month reporting period for the information and data requested in Form No. LHL608 (Health Benefit Plan/Provider Contracting Practices Survey), including the data for the in-network and non-network claims for facility-based physicians, is calendar year 2007. The enrollment data required in Form No. LHL608 (Health Benefit Plan/Provider Contracting Practices Survey) and Form No. LHL 609 (Health Benefit Plan Issuer Hospital Grid) for private market plans, governmental employee plans, and Local Government Code Chapter 172 risk pools, is for the total number of lives covered under the plans as of September 1, 2008. The information and data requested in Form No. LHL 609 (Health Benefit Plan Issuer Hospital Grid) is to be based on the health benefit plan issuer's current practices and network arrangements.

§21.4604. Submission of Information and Data.

(a) Each health benefit plan issuer identified in §21.4602(a) and (b) of this subchapter (relating to Applicability) shall submit to the department the information and data required in Form No. LHL608 (Health Benefit Plan/Provider Contracting Practices Survey) that is adopted by reference in §21.4605(a) of this subchapter (relating to Report Forms) by no later than February 27, 2009, and the information and data required in Form No. LHL609 (Health Benefit Plan Issuer Hospital Grid) that is adopted by reference in §21.4605(b) of this subchapter by no later than February 27, 2009.

(b) The information and data filed pursuant to this section shall be filed electronically by accessing a link designated on the department's website, www.tdi.state.tx.us, and by emailing the completed forms to networkadequacy@tdi.state.tx.us.

§21.4605. Report Forms.

(a) The commissioner adopts by reference Form No. LHL608 (Health Benefit Plan/Provider Contracting Practices Survey) which contains instructions for completion of the form; requires information to be provided regarding health benefit plan issuer identification; and requires narrative responses to 16 questions relating to how health benefit plan issuers contract with providers and determine reimbursement rates. The form also requests in Question No. 17 individual health benefit plan issuer information for both in-network and non-network claims for facility-based physicians for calendar year 2007, including for each type of facility-based physician listed on the form (Anesthesiologist, Pathologist, Radiologist, Neonatologist, Emergency Department Physician) total claim units, total billed amount, and total allowed amount. The form is available at www.tdi.state.tx.us/forms/form10other.html.

(b) The commissioner adopts by reference Form No. LHL609 (Health Benefit Plan Issuer Hospital Grid) which contains instructions for completion of the form; requires information to be provided regarding health benefit plan issuer identification; and requires information to be provided by each health benefit plan issuer regarding which hospitals are in-network facilities and for those hospitals, which in-network physician or physician practice groups have clinical privileges. The 281 hospitals listed in the form include every acute care hospital in the state with 100 or more beds and 20 percent of smaller acute care hospitals, as identified by the Texas Department of State Health Services. The form is available at www.tdi.state.tx.us/forms/form10other.html.

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

Filed with the Office of the Secretary of State on January 20, 2009.

TRD-200900225
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: February 9, 2009
Proposal publication date: October 3, 2008
For further information, please call: (512) 463-6327

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 27. CRIME RECORDS

SUBCHAPTER I. SECURE ELECTRONIC MAIL, ELECTRONIC TRANSMISSIONS AND FACSIMILE TRANSMISSIONS

37 TAC §27.111

The Texas Department of Public Safety adopts new §27.111, concerning Secure Electronic Mail, Electronic Transmissions and Facsimile Transmissions, without changes to the proposed text as published in the November 7, 2008, issue of the *Texas Register* (33 TexReg 9068).

Adoption of new §27.111 is necessary in order to implement provisions of Texas Government Code, Chapter 411, directing the Texas Department of Public Safety in consultation with the Office of Court Administration of the Texas Judicial System to adopt rules regarding minimum standards for the security of secure electronic mail, electronic transmissions and facsimile transmissions.

No comments were received regarding adoption of the new section.

The new section is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §411.081(g-1a).

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

Filed with the Office of the Secretary of State on January 22, 2009.

TRD-200900275
Stanley E. Clark
Director
Texas Department of Public Safety
Effective date: February 11, 2009
Proposal publication date: November 7, 2008
For further information, please call: (512) 424-2135

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SUBCHAPTER J. UNIFORM CRIME REPORTING

37 TAC §27.121

The Texas Department of Public Safety adopts new §27.121, concerning Sexual Assault Reporting, with changes to the proposed text as published in the November 7, 2008, issue of the *Texas Register* (33 TexReg 9069).

Adoption of new §27.121 is necessary in order to implement provisions of Texas Government Code, §411.042, directing the Texas Department of Public Safety, in consultation with statewide, nonprofit sexual assault programs, to establish rules and procedures to ensure law enforcement agencies report sexual assault offenses in the proper form and manner and at regular intervals.

No comments were received regarding adoption of the new section.

The new section is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §411.042(i).

§27.121. Sexual Assault Reporting.

(a) Section 411.042, Texas Government Code, mandates that a law enforcement agency shall report offenses under §22.011 and §22.021, Penal Code, to the Texas Department of Public Safety. The Department shall create a statistical breakdown of these offenses.

(b) Information collected by the local law enforcement agency must include information indicating the specific offense committed and information regarding:

(1) the victim;

(2) the offender's age, sex, race, and ethnic origin;

(3) the offender's relationship to the victim;

(4) the number of victims and the number of offenders;

(5) any weapons used or exhibited in the commission of the offense;

(6) any injuries sustained by the victim;

(7) the location of the offense;

(8) the incident date and time.

(c) For purposes of this report, the following Texas Penal Code offense classifications will be collected:

(1) §21.02--Continuous sexual abuse of young child or children;

(2) §21.11(a)(1)--Indecency with a child by contact;

(3) §21.11(a)(2)--Indecency with a child by exposure;

(4) §22.011--Sexual Assault;

(5) §22.021--Aggravated sexual assault;

(6) §43.25--Sexual performance by a child.

(d) Reports should be forwarded to the Department on a monthly basis using the method and form approved by the Department Uniform Crime Reporting.

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

Filed with the Office of the Secretary of State on January 22, 2009.

TRD-200900276
Stanley E. Clark
Director
Texas Department of Public Safety
Effective date: February 11, 2009
Proposal publication date: November 7, 2008
For further information, please call: (512) 424-2135

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PART 3. TEXAS YOUTH COMMISSION

CHAPTER 81. INTERACTION WITH THE PUBLIC

37 TAC §81.81

The Texas Youth Commission adopts new §81.81, concerning Background Checks, with changes to the proposed text as published in the July 25, 2008, issue of the *Texas Register* (33 TexReg 5895). Changes consist of a clarification in subsection (d)(2)(E), that a background check waiver may be granted for a government employee *other than a TYC employee* when the person is providing services in his/her official capacity.

The justification for the new rule is compliance with legislation enacted by the 80th Texas Legislature, as well as increased protection of TYC youth and youth records resulting from a more comprehensive system of background checks for any person having contact with youth or access to youth records.

The new rule will require initial and annual background checks for employees, volunteers, contractors, advocates, ombudsmen, and certain other persons who deliver services to TYC youth or have access to youth records.

The commission received a comment from Advocacy, Incorporated regarding the proposed rule.

Comment: Since Advocacy Inc. has signed into an access agreement with TYC that streamlines its access to TYC facilities, residents, staff, and records, the language in the access agreement should be added into the rule in order to reflect Advocacy Inc.'s unique federal authority.

Response: Nothing in this proposed rule denies or limits the rights, powers, and responsibilities of the protection and advocacy system established under 42 USCS §10803. Language specifically exempting or applying portions of the rule to a federally authorized protection and advocacy organization is not necessary. No changes were made to the proposed rule as a result of the comment.

The new rule is adopted under Human Resources Code §61.0357, which requires the commission to conduct national and state criminal history checks and review the employment history for certain persons who work in commission facilities or work with youth or youth records.

§81.81. Background Checks.

(a) Policy. The Texas Youth Commission (TYC) reviews criminal histories and employment references for certain persons as required under §61.0357, Texas Human Resources Code.

(b) Applicability. This rule does not apply to:

(1) youth access to a personal attorney, minister, pastor, or religious counselor under §93.11 or §93.17 of this title (relating to Access to Attorneys and Courts and Access to Personal Minister, Pastor, or Religious Counselor);

(2) youth access to visitors under §93.12 of this title (relating to Visitation); or

(3) special event visitors, as defined in this rule.

(c) Definitions. The following terms, as used in this rule, have the following meanings unless the context clearly indicates otherwise:

(1) Advocate--means a person who is employed by or otherwise officially associated with an organization registered with TYC as an advocacy or support group under §81.83 of this title (relating to Advocacy and Support Group Access).

(2) Background Check--consists, at a minimum, of the following:

(A) Criminal History Check--includes national and state criminal history information maintained by the Department of Public Safety; and

(B) Employment Reference Check--includes references from previous and current employers.

(3) Contractor--means a person who is under contract with TYC individually or is an employee or subcontractor of an organization under contract with TYC.

(4) Covered Person--means:

(A) an employee, volunteer, ombudsman, advocate, or contractor, as defined in this rule;

(B) any person not described in paragraph (4)(A) of this subsection who provides direct delivery of services to youth whose current assignment is to a residential placement operated by or under contract with TYC when those services are provided at the request of TYC;

(C) any person not described in paragraph (4)(A) of this subsection who is authorized to have unsupervised access to records of identifiable TYC youth; or

(D) any person who is an applicant for a position described in paragraphs (4)(A) - (C) of this subsection.

(5) Employee--means a person who is employed by TYC.

(6) Ombudsman--means a person who is employed by the Office of Independent Ombudsman of the Texas Youth Commission.

(7) Special Event Visitor--means a person who:

(A) is invited by TYC to participate in a special event for the benefit of youth;

(B) does not participate in more than four special events in any 12-month period;

(C) does not provide direct delivery of services to youth;

(D) does not have access to youth records; and

(E) does not meet the definition of advocate, contractor, employee, or ombudsman.

(8) Volunteer--means a person who is registered in a position that renders services for or on behalf of TYC that does not receive compensation in excess of reimbursement for expenses incurred. For purposes of this rule, "volunteer" does not include special event visitors.

(d) General Provisions.

(1) Except as described in paragraph (2) of this subsection, TYC's chief executive officer or his/her designee will:

(A) conduct a background check on each covered person prior to granting the person access to any residential facility operated by or under contract with TYC, youth, or youth records; and

(B) conduct a criminal history check on each covered person at least once per year thereafter.

(2) The TYC chief executive officer or designee may elect to waive the background check:

(A) for a contractor when physical or procedural barriers are in place to prevent the contractor from having contact with or access to TYC youth and the scope of services to be performed does not involve access to youth records;

(B) for a contractor who has an independent legal obligation to protect the confidentiality of youth records and the scope of services to be performed does not involve access to youth;

(C) for a covered person who provides direct delivery of off-site services to youth assigned to residential placements when the person is required to submit to a background check as a condition of professional licensure or employment (e.g., health care specialist referrals); or

(D) for a covered person providing necessary services in an emergency situation when no appropriately screened service providers offering the same or similar service are immediately available and a delay in providing the service would risk significant harm to a youth (e.g., emergency room visits or rape crisis counseling); or

(E) for a covered person, other than a TYC employee, providing services in his/her official capacity as an employee of a federal, state, or local governmental entity.

(3) TYC does not assess a fee in connection with the administrative costs incurred in conducting a background check as described in this rule.

(4) As part of the initial national criminal history background check, a covered person must electronically provide a complete set of fingerprints to TYC.

(5) A covered person must provide employment history information in a form and manner determined by TYC.

(6) All criminal history information obtained from the National Crime Information Center (NCIC) or any other state crime information database is confidential and not releasable.

(e) Standards for Evaluating Background Information.

(1) Background check results for covered persons will be evaluated according to standards established in TYC's policies addressing eligibility for employment or assignment in effect at the time the background check is conducted.

(2) When a background check reveals a criminal or employment history that is deemed unacceptable for the position or service to be performed by an employee or volunteer, TYC will deny or terminate employment or enrollment.

(3) When a background check reveals a criminal or employment history that is deemed unacceptable for the position or service to be performed by a contractor, advocate, or ombudsman, TYC will deny the person access to youth, youth information, TYC facilities, or any or all of the preceding. TYC will provide written notice to a contractor, advocate, or ombudsman whose access is denied.

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

Filed with the Office of the Secretary of State on January 23, 2009.

TRD-200900286

Cheryln K. Townsend

Executive Commissioner

Texas Youth Commission

Effective date: February 15, 2009

Proposal publication date: July 25, 2008

For further information, please call: (512) 424-6014

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37 TAC §81.83

The Texas Youth Commission adopts new §81.83, concerning Advocacy and Support Group Access, without changes to the proposed text as published in the July 25, 2008, issue of the *Texas Register* (33 TexReg 5896).

The justification for the new rule is increasing youth access to beneficial services provided by community partners. The new rule will establish a system for registering advocacy and support group members and organizations who wish to provide on-site information, support, or other services to youth confined in commission facilities.

The commission received a comment from Advocacy, Incorporated regarding the proposed rule.

Comment: Since Advocacy Inc. has signed into an access agreement with TYC that streamlines its access to TYC facilities, residents, staff, and records, the language in the access agreement should be added into the rule in order to reflect Advocacy Inc.'s unique federal authority.

Response: Nothing in this proposed rule denies or limits the rights, powers, and responsibilities of the protection and advocacy system established under 42 USCS §10803. Language specifically exempting or applying portions of the rule to a federally authorized protection and advocacy organization is not necessary. No changes were made to the proposed rule as a result of the comment.

The new rule is adopted under Human Resources Code §61.0386, which provides the commission with the authority to adopt security and privacy procedures for groups that provide on-site information, support, and other services to youth confined in commission facilities.

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

Filed with the Office of the Secretary of State on January 23, 2009.

TRD-200900287

Cheryln K. Townsend

Executive Commissioner

Texas Youth Commission

Effective date: February 15, 2009

Proposal publication date: July 25, 2008

For further information, please call: (512) 424-6014

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 802. TEXAS WORKFORCE COMMISSION LOCAL WORKFORCE DEVELOPMENT BOARD ADVISORY COMMITTEE

The Texas Workforce Commission (Commission) adopts the repeal of Chapter 802 in its entirety, relating to the Texas Workforce Commission Local Workforce Development Board Advisory Committee rules, without changes, as published in the November 28, 2008, issue of the *Texas Register* (33 TexReg 9659):

Subchapter A. General Provisions, §§802.1 - 802.4

Subchapter B. Requirements for TWC Advisory Committee Members, §§802.11 - 802.15

Subchapter C. Requirements for TWC Advisory Committee Meetings, §802.21 and §802.22

Subchapter D. Reporting to the Commission, §802.31

Subchapter E. Agency Evaluation of the TWC Advisory Committee and Report to the Legislative Budget Board, §802.41 and §802.42

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted repeal is to eliminate Chapter 802, relating to the Texas Workforce Commission (TWC) Local Workforce Development Board Advisory Committee rules, created pursuant to Texas Labor Code §302.013. Under Texas Government Code §2110.008(b), an advisory committee is automatically abolished on the fourth anniversary of the date of its creation. Because the law creating the TWC Advisory Committee became effective September 1, 2003, the automatic abolishment date of the TWC Advisory Committee is September 1, 2007; therefore, these rules are no longer required.

No comments were received on the proposed repeal.

The Agency hereby certifies that the repeal has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§802.1 - 802.4

The repeal is adopted pursuant to Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted repeal affects Texas Labor Code, Title 4; Texas Labor Code §302.013, regarding establishment of an advisory committee to the Commission; and Texas Government Code, Chapter 2110, relating to state agency advisory committees.

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

Filed with the Office of the Secretary of State on January 20, 2009.

TRD-200900227
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Effective date: February 9, 2009
Proposal publication date: November 28, 2008
For further information, please call: (512) 475-0230

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SUBCHAPTER B. REQUIREMENTS FOR TWC ADVISORY COMMITTEE MEMBERS

40 TAC §§802.11 - 802.15

The repeal is adopted pursuant to Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted repeal affects Texas Labor Code, Title 4; Texas Labor Code §302.013, regarding establishment of an advisory committee to the Commission; and Texas Government Code, Chapter 2110, relating to state agency advisory committees.

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

Filed with the Office of the Secretary of State on January 20, 2009.

TRD-200900228
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Effective date: February 9, 2009
Proposal publication date: November 28, 2008
For further information, please call: (512) 475-0230

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SUBCHAPTER C. REQUIREMENTS FOR TWC ADVISORY COMMITTEE MEETINGS

40 TAC §802.21, §802.22

The repeal is adopted pursuant to Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted repeal affects Texas Labor Code, Title 4; Texas Labor Code §302.013, regarding establishment of an advisory committee to the Commission; and Texas Government Code, Chapter 2110, relating to state agency advisory committees.

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

Filed with the Office of the Secretary of State on January 20, 2009.

TRD-200900229

Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Effective date: February 9, 2009
Proposal publication date: November 28, 2008
For further information, please call: (512) 475-0230

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SUBCHAPTER D. REPORTING TO THE COMMISSION

40 TAC §802.31

The repeal is adopted pursuant to Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted repeal affects Texas Labor Code, Title 4; Texas Labor Code §302.013, regarding establishment of an advisory committee to the Commission; and Texas Government Code, Chapter 2110, relating to state agency advisory committees.

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

Filed with the Office of the Secretary of State on January 20, 2009.

TRD-200900230
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Effective date: February 9, 2009
Proposal publication date: November 28, 2008
For further information, please call: (512) 475-0230

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SUBCHAPTER E. AGENCY EVALUATION OF THE TWC ADVISORY COMMITTEE AND REPORT TO THE LEGISLATIVE BUDGET BOARD

40 TAC §802.41, §802.42

The repeal is adopted pursuant to Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted repeal affects Texas Labor Code, Title 4; Texas Labor Code §302.013, regarding establishment of an advisory committee to the Commission; and Texas Government Code, Chapter 2110, relating to state agency advisory committees.

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

Filed with the Office of the Secretary of State on January 20, 2009.

TRD-200900231
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Effective date: February 9, 2009
Proposal publication date: November 28, 2008
For further information, please call: (512) 475-0230

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CHAPTER 839. WELFARE TO WORK

The Texas Workforce Commission (Commission) adopts the repeal of Chapter 839 in its entirety, relating to the Welfare to Work Program rules, without changes, as published in the November 28, 2008, issue of the *Texas Register* (33 TexReg 9661):

Subchapter A. General Provisions, §§839.1 - 839.3

Subchapter B. Nondiscrimination and Equal Opportunity, §839.11 and §839.12

Subchapter C. Welfare to Work Grievance Procedures, §§839.31 - 839.36 and §§839.38 - 839.47

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted repeal is to eliminate Chapter 839, relating to the Welfare to Work Program rules.

On January 23, 2004, Congress enacted the Consolidated Appropriations Act for 2004. The Act rescinded unexpended Federal Fiscal Year 1999 (FFY'99) Welfare to Work (WtW) formula funds as of that date, except for those funds needed to carry out closeout activities.

On February 27, 2004, the U.S. Department of Labor (DOL) issued Training and Employment Guidance Letter 19-03 to provide policy and procedures relating to program termination, transition of participants, and closeout pursuant to the rescission of the FFY'99 WtW formula funds. The closeout activities have been completed and the formula funds expended, therefore, these rules are no longer required.

No comments were received on the proposed repeal.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§839.1 - 839.3

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The adopted repeal affects Texas Labor Code, Title 4, and Texas Government Code, Chapter 2308.

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

Filed with the Office of the Secretary of State on January 20, 2009.

TRD-200900232

Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Effective date: February 9, 2009
Proposal publication date: November 28, 2008
For further information, please call: (512) 475-0230

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SUBCHAPTER B. NONDISCRIMINATION AND EQUAL OPPORTUNITY

40 TAC §839.11, §839.12

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The adopted repeal affects Texas Labor Code, Title 4, and Texas Government Code, Chapter 2308.

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

Filed with the Office of the Secretary of State on January 20, 2009.

TRD-200900233
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Effective date: February 9, 2009
Proposal publication date: November 28, 2008
For further information, please call: (512) 475-0230

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SUBCHAPTER C. WELFARE TO WORK GRIEVANCE PROCEDURES

40 TAC §§839.31 - 839.36, 839.38 - 839.47

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The adopted repeal affects Texas Labor Code, Title 4, and Texas Government Code, Chapter 2308.

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

Filed with the Office of the Secretary of State on January 20, 2009.

TRD-200900234
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Effective date: February 9, 2009
Proposal publication date: November 28, 2008
For further information, please call: (512) 475-0230

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Education Agency

Title 19, Part 2

The State Board of Education (SBOE) proposes the review of 19 TAC Chapter 101, Assessment, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the SBOE in 19 TAC Chapter 101 are organized under the following subchapters: Subchapter A, General Provisions; Subchapter B, Development and Administration of Tests; Subchapter C, Security and Confidentiality; Subchapter D, Scoring and Reporting; and Subchapter E, Local Option.

As required by the Texas Government Code, §2001.039, the SBOE will accept comments as to whether the reasons for adopting 19 TAC Chapter 101, Subchapters A - E, continue to exist. The comment period begins with the publication of this notice and must last a minimum of 30 days.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028.

TRD-200900326
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: January 27, 2009

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The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 101, Assessment, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the TEA in 19 TAC Chapter 101 are organized under the following subchapters: Subchapter AA, Commissioner's Rules Concerning the Participation of Limited English Proficient Students in State Assessments; Subchapter BB, Commissioner's Rules Concerning the Student Success Initiative; Subchapter CC, Commissioner's Rules Concerning Implementation of Testing Program; Subchapter DD, Commissioner's Rules Concerning Alternative Exit-Level Assessments; Subchapter EE, Commissioner's Rules Concerning the Statewide Testing Calendar and UIL Participation; and Subchapter FF, Commissioner's Rules Concerning Diagnostic Assessment.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 101, Subchapters AA - FF, continue to exist.

The public comment period on the review of 19 TAC Chapter 101, Subchapters AA - FF, begins February 6, 2009, and ends March 9, 2009. Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028.

TRD-200900327
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: January 27, 2009

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §33.25(c)

Permit/License Type (agency code)	**Texas Alcoholic Beverage Code Chapter**
Agent's Permit (A)	Chapter 35
Manufacturer's Agent's Permit (T)	Chapter 36
Agent's Beer License (BK)	Chapter 37

Figure: 16 TAC §33.25(d)

Permit/License Type (agency code)	**Texas Alcoholic Beverage Code Chapter**
Airline Beverage Permit (AB)	Chapter 34
Beverage Cartage Permit (PE)	Chapter 44
Bonded Warehouse Permit (J)	Chapter 46
Bonded Warehouse Permit (Dry Area) (JD)	Chapter 46
Brewpub License (BP)	Chapter 74
Carrier's Permit (C)	Chapter 41
Caterer's Permit (CB)	Chapter 31
Direct Shipper's Permit (DS)	Chapter 54
Distiller's & Rectifier's Permit (D)	Chapter 14
Food and Beverage Certificate (FB)	Chapter 25
Industrial Permit (I)	Chapter 38
Local Industrial Alcohol Manufacturer's Permit (LI)	Chapter 47
Market Research Packager's Permit (MR)	Chapter 49
Minibar Permit (MI)	Chapter 51
Mixed Beverage Permit (MB)	Chapter 28
Mixed Beverage Restaurant Permit (RM) with FB	Chapter 28
Mixed Beverage Late Hours (LB)	Chapter 29
Passenger Train Beverage Permit (PT)	Chapter 48
Private Carrier's Permit (O)	Chapter 42
Private Club Exemption Certificate Permit (NE)	Chapter 32
Private Club Registration Permit (N)	Chapter 32
Private Club Beer and Wine Permit (NB)	Chapter 32
Private Club Late Hours Permit (NL)	Chapter33
Promotional Permit (PR)	Chapter 54
Wine Bottler's Permit (Z)	Chapter 18
Winery Permit (G)	Chapter 16
Winery Storage Permit (GS)	Chapter 45

Figure: 16 TAC §33.25(e)

Permit/License Type (agency code)	**Texas Alcoholic Beverage Code Chapter**
Agent's Manufacturing Warehousing Permit (AW)	Chapter 55
Brewer's Permit (B)	Chapter 12
Forwarding Center Authority (FC)	Rule §35.6
Local Cartage Permit (E)	Chapter 43
Local Cartage Transfer Permit (ET)	Chapter 43
Local Distributor's Permit (LP)	Chapter23
Private Storage Permit (L)	Chapter 45
Public Storage Permit (K)	Chapter 45
Package Store Permit (P)	Chapter 22
Wine Only Package Store Permit (Q)	Chapter 24
Package Store Tasting Permit (PS)	Chapter 52
Non-Resident Seller's Permit (S)	Chapter 37
Non-Resident Brewer's Permit (U)	Chapter 13
Storage License (SL)	Chapter 75
Wholesaler's Permit (W)	Chapter 19
General Class B Wholesaler's Permit (X)	Chapter 20
Local Class B Wholesaler's Permit (LX)	Chapter 21
Branch Distributor's License (BC)	Chapter 66
General Distributor's License (BB)	Chapter 64
Importer's License (BI)	Chapter 67
Importer's Carrier's License (BJ)	Chapter 68
Local Distributor's License (BD)	Chapter 65
Manufacturer's License (BA)	Chapter 62
Manufacturer's Warehouse License (MW)	Chapter 62
Non Resident Manufacturer's License (BS)	Chapter 63
Beer Retailer's Off Premise License (BF)	Chapter 71
Beer Retailer's On Premise License (BE) Counties under 1.4 million population	Chapter 69
Beer Retailer's On Premise License (BE) Counties over 1.4 million population - Original	Chapter 69
Beer Retailer's On Premise License (BE) Counties over 1.4 million population - Renewal	Chapter 69
Retail Dealer's On Premise Late Hours License (BL)	Chapter 70
Wine and Beer Retailer's On Premise License (BG) Counties under 1.4 million population	Chapter 25
Wine and Beer Retailer's On Premise License (BG) Counties over 1.4 million population	Chapter 25
Wine and Beer Retailer's Off Premise License (BQ)	Chapter 26
Wine and Beer Retailer's Permit Railway Car (Y)	Chapter 25
Wine and Beer Retailer's Permit Excursion Boat (V)	Chapter 25
Food and Beverage Certificate (FB)	Chapter 25

Figure: 28 TAC §5.6408(c)

BOND OF SERVICE COMPANY FOR A WORKERS' COMPENSATION SELF-INSURED GROUP

Know all persons by these presents, that (name of service company), as principal, and (name of surety), as surety, being a surety company duly authorized to do business in the State of Texas, are held and firmly bound unto the (name of group or in the event of a receivership, the receiver) for the obligations and liabilities of the principal, arising from or related to providing claims services, in the sum of $_____, lawful money of the United States, for the payment of which sum we bind ourselves, our successors and assigns, jointly and severally.

The conditions of the above obligations are:

Whereas, the above named principal has entered into an agreement dated _____ with (name of group) to perform duties and services for the group.

Now, therefore, if the principal shall perform its duties and obligations under the agreement dated _____, then this obligation shall be void; otherwise, this obligation will remain in full force and effect.

PROVIDED, this bond may be canceled as a future liability by the surety upon sixty days written notice to the principal and the (name of group or in the event of a receivership, the receiver); however, such cancellation shall not discharge the surety's liability accrued during the term of this bond or which shall accrue in said sixty day period.

In witness whereof said principal and surety have executed this bond the _____ day of _____, 20__, to be effective the ___day of _____, 20__.

_____
Principal

_____
Surety

Form Number FIN 464

Figure: 40 TAC §746.1017(a)

Education	Experience
(1) A bachelor's degree with 12 college credit hours in child development and three college credit hours in business management,	and at least one year of experience in a licensed child-care center or a licensed or registered child-care home;
(2) An associate's of applied science degree in child development or a closely related field with six college credit hours in child development and three college credit hours in business management. A "closely related field" is any educational instruction pertaining to the growth, development, physical or mental care, or education of children ages birth through 13 years,	and at least one year of experience in a licensed child-care center or a licensed or registered child-care home;
(3) Sixty college credit hours with six college credit hours in child development and three college credit hours in business management,	and at least one year of experience in a licensed child-care center or a licensed or registered child-care home;
(4) A Child Development Associate credential or Certified Child-Care Professional credential with three college credit hours in business management,	and at least one year of experience in a licensed child-care center or a licensed or registered child-care home;
(5) A child-care administrator's certificate from a community college with at least 15 college credit hours in child development and three college credit hours in business management,	and at least two years of experience in a licensed child-care center or a licensed or registered child-care home;
(6) A day-care administrator's credential issued by a professional organization or an educational institution and approved by Licensing based on criteria specified in Subchapter P of Chapter 745 of this title (relating to Day-Care Administrator's Credential Program),	and at least two years of experience in a licensed child-care center or licensed or registered child-care home; or
(7) Seventy-two clock hours of training in child development and 30 clock hours in business management,	and at least three years of experience in a licensed child-care center or a licensed or registered child-care home.

Figure: 40 TAC §746.1601

If the specified age of the children in the group is…	Then the maximum number of children one caregiver may supervise is…
0-11 months	4
12-17 months	5
18-23 months	9
2 years	11
3 years	15
4 years	18
5 years	22
6-8 years	26
9-13 years	26

Figure: 40 TAC §746.1609

If the specified age of the children in the group is…	Then the maximum group size and number of children two or more caregivers may supervise is…
0-11 months	10
12-17 months	13
18-23 months	18
2 years (24 months)	22
3 years	30
4 years	35
5 years	35
6-8 years	35
9-13 years	35

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Notice Regarding Private Real Property Rights Preservation Act Guidelines

In 1995, the Legislature enacted the Private Real Property Rights Preservation Act (Act), Texas Government Code Chapter 2007. As required by the Act, the Office of the Attorney General prepared guidelines to assist governmental entities in identifying and evaluating those governmental actions that might result in a taking of private real property. The guidelines were first published in the January 12, 1996, issue of the *Texas Register* (21 TexReg 387). The Act requires that the Office of the Attorney General review the guidelines at least annually and revise them as necessary. The guidelines are available at www.oag.state.tx.us/AG_Publications/txts/propertyguide2005.shtml. The most recent revision was published in the November 25, 2005, issue of the *Texas Register* (30 TexReg 7911).

The Office of the Attorney General has begun its annual review and invites comments, suggestions, or information on whether the guidelines are consistent with the decisions of the United States and Texas supreme courts from June 1, 2007 through June 30, 2008. Any comments must be submitted no later than 30 days from publication of this notice. Please address comments to Jeb Boyt, Assistant Attorney General, Environmental Protection and Administrative Law Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78701-2548, or at jeb.boyt@oag.state.tx.us or via facsimile at (512) 320-0167. The Office of the Attorney General will review any comments submitted and will later publish notice of any revisions to the guidelines.

TRD-200900316
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: January 27, 2009

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Texas Solid Waste Disposal Act Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Solid Waste Disposal Act and the Texas Water Code. Before the State may settle an environmental enforcement action under the Texas Solid Waste Disposal Act and 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.

Case Title and Court: *Houston Industries, Inc. v. Texas Commission on Environmental Quality v. Commercial Metals Company and Jack B. Hensley,* Cause No. 98-01946, in the 353rd Judicial District Court, Travis County, Texas.

Nature of Suit: As early as the 1960's, the Site located at 3603 Jensen Drive, Houston, Texas, was operated as a scrap metal salvage yard. The Texas Commission on Environmental Quality determined after investigation, that Houston Industries, Inc. sold used electrical transformers to Commercial Metals Company, who then arranged to have the Site's operator(s) reclaim certain metals from the transformers. The operator(s) of the Site would then open the transformers, allowing the cooling fluids to leak onto the ground. The cooling fluids contained several heavy metals as well as poly-chlorinated biphenyls. The State of Texas excavated and contained the contaminated soils in a sealed landfill on-site. On-site monitoring wells are in place and will require periodic monitoring to ensure contamination does not spread.

Proposed Agreed Judgment: The Agreed Final Judgment orders Houston Industries, Inc. and Commercial Metals Company to pay the State $1.5 million in clean-up cost reimbursement, and pay attorney's fees to the State in the amount of $100,000. Houston Industries, Inc. and Commercial Metals Company will continue periodic monitoring and maintenance of the Site.

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 Anthony W. Benedict, 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.

For more information regarding this publication, contact Cindy Hodges, Agency Liaison, at (512) 936-1841.

TRD-200900334
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: January 27, 2009

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/02/09 - 02/08/09 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/02/09 - 02/08/09 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200900311

Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: January 26, 2009

♦ ♦ ♦

Education Service Center, Region 16

Official Notice for Election Places 1, 2 and 7 on the Board of Directors

Persons interested in filing for positions on the Board of Directors of Region 16 Education Service Center, an organization that provides educational services to 63 school districts and two charter schools in the north 26 counties of the Texas Panhandle, may do so at the office of the Executive Director (5800 Bell Street, Amarillo, Texas) during regular office hours (8:00 a.m. to 5:00 p.m.) Monday through Thursday, (8:00 a.m. to 4:00 p.m.) Friday, beginning Monday, February 2, 2009. Deadline for filing is Friday, February 20, 2009, at 5:00 p.m.

Interested persons may file in person or, upon request, may receive a filing form by mail with the return by certified mail postmarked no later than 5:00 p.m., February 20, 2009. Phone: (806) 677-5015; Mailing address: 5800 Bell Street, Amarillo, Texas 79109-6230.

The Board of Directors shall be elected by place. The following places (by counties) that are up for election are described as follows:

Place 1 - Counties of Armstrong, Briscoe, Carson, Donley, Randall, and Swisher

Place 2 - Counties of Castro, Deaf Smith, and Parmer

Place 7 - Counties of Childress, Collingsworth, Gray, Hall, and Wheeler

To hold the office of an Education Service Center Board of Director, one must:

Be a United States of America citizen;

Be at least 18 years of age; and

Be a resident of the region served and of the geographic area included in the place designated outlined above.

To hold the office of Board member, one may not:

Be engaged professionally in education; or

Be a member of a board of any educational agency or institution.

Should there be an uncontested election; the Region 16 Education Service Center Board has determined that no election will be held.

TRD-200900340
John Bass
Executive Director
Education Service Center, Region 16
Filed: January 28, 2009

♦ ♦ ♦

Texas Education Agency

Request for Applications Concerning Dropout Prevention Mini-Grants

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-09-111 from school districts, open-enrollment charter schools, and nonprofit agencies.

Description. The purpose of the grant is to build the capacity of the grantee to mobilize people and resources to identify and implement creative solutions to address the issues of dropout prevention and high school completion. Grant funds must be used for projects that build capacity for dropout prevention through one or more of the following objectives: (1) increasing public awareness of the dropout crisis; (2) securing commitment for integrated collaboration between the business, community, and school sectors; (3) engaging schools and providing exposure to strengthen and support their efforts to help disadvantaged youth graduate from high school; (4) identifying and inspiring local leadership to get involved in community-school initiatives; and (5) developing local community action plans to address the dropout crisis.

Dates of Project. The Dropout Prevention Mini-Grants will be implemented during the 2008 - 2009 school year. Applicants should plan for a starting date of no earlier than May 1, 2009, and an ending date of no later than September 30, 2009.

Project Amount. Funding will be provided for approximately five projects. Each project will receive a maximum of $2,000. This project is funded by TEA to address the issues of dropout prevention and high school completion.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. Due to the high cost of printing and mailing RFAs, they will no longer be available in print. The announcement letter and complete RFA will be posted on the TEA website at http://burleson.tea.state.tx.us/GrantOpportunities/forms for viewing and downloading. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Further Information. For clarifying information about the RFA, contact Kathy Mihalik, Division of Discretionary Grants, Texas Education Agency, (512) 463-9269. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any information that is different from or in addition to information provided in the RFA will be provided only in response to written inquiries. Copies of all such inquiries and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at http://burleson.tea.state.tx.us/GrantOpportunities/forms. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Thursday, March 26, 2009, to be eligible to be considered for funding.

TRD-200900325

Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: January 27, 2009

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 9, 2009**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 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 9, 2009**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Bayer MaterialScience LLC; DOCKET NUMBER: 2008-1546-AIR-E; IDENTIFIER: RN100209931; LOCATION: Baytown, Chambers County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 Texas Administrative Code (TAC) §116.115(c) and §122.143(4), Air Permit Number O-02100, Special Terms and Conditions (STC) Number 7, Air Permit Number 2035A, Special Condition (SC) Number 7C, and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain incinerator exit temperature at or above 1,600 degrees Fahrenheit; PENALTY: $2,130; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Bethany-Hearne Water Supply Corporation; DOCKET NUMBER: 2008-1653-PWS-E; IDENTIFIER: RN101203180; LOCATION: Robertson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.43(e), by failing to provide an intruder-resistant fence; 30 TAC §290.46(f)(2), by failing to keep water system records on file and make them available for commission review; and 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or a service agreement with provisions for proper enforcement; PENALTY: $154; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2008-1262-AIR-E; IDENTIFIER: RN100825249; LOCATION: Old Ocean, Brazoria County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §§101.20(3), 116.715(c), and 122.143(4), Federal Operating Permit (FOP) Number O-2151, STC Number 16, New Source Review (NSR) Permit Number 22690/PSD-TX-751M1, SC Number 1, and THSC, §382.085(b), by failing to maintain an emission rate below the allowable annual limit for nitrogen oxides (NO_x) and carbon monoxide (CO); 30 TAC §§101.20(3), 116.715(c), and 122.143(4), FOP Number O-2151, STC Number 16, NSR Permit Number 22690/PSD-TX-751M1, SC Number 1, and THSC, §382.085(b), by failing to maintain an emission rate below the allowable maintenance, start-up, and shutdown rolling 12-month average for NO_x and CO; 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O-2151, General Terms and Conditions (GTC), and THSC, §382.085(b), by failing to disclose a deviation within the deviation reporting period; 30 TAC §101.20(3) and §116.715(c), NSR Permit Number 22690/PSD-TX-751M1, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.20(1) and (3) and §116.715(c), 40 Code of Federal Regulations (CFR) §60.18(c)(2), NSR Permit Number 22690/PSD-TX-751M1, SC Numbers 1 and 15, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $52,879; Supplemental Environmental Project (SEP) offset amount of $21,152 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2008-1457-AIR-E; IDENTIFIER: RN103919817; LOCATION: Baytown, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 2462C, SC Number 1, and THSC, §382.085(b), by failing prevent unauthorized emissions; PENALTY: $8,500; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: Coke County Water Supply Corporation; DOCKET NUMBER: 2008-1669-PWS-E; IDENTIFIER: RN101220820; LOCATION: Coke County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(ii) and (F), and (3)(A)(ii), and THSC, §341.033(d), by failing to collect routine distribution coliform samples, by failing to collect at least five routine distribution coliform samples, and by failing to collect a set of repeat distribution coliform samples; PENALTY: $2,160; SEP offset amount of $2,160 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Unauthorized Trash Dump Clean-Up; ENFORCEMENT COORDINATOR: Christopher Keffer, (512) 239-5610; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(6) COMPANY: City of Crowell; DOCKET NUMBER: 2008-0991-MWD-E; IDENTIFIER: RN101612380; LOCATION: Crowell, Foard County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.65 and §305.125(2) and the Code, §26.121(a), by failing to maintain authorization for the discharge of wastewater; PENALTY: $12,600; SEP offset amount of $10,080 applied to RC&D - Unauthorized Trash Dump Clean-Up; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(7) COMPANY: Dream Enterprises, Inc. dba Gibby's Food Store; DOCKET NUMBER: 2008-1591-PST-E; IDENTIFIER: RN101984094; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; and 30 TAC §115.242(1)(C) and THSC, §382.085(b), by failing to upgrade the Stage II equipment to onboard refueling vapor recovery compatible systems; PENALTY: $4,296; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: E. I. du Pont de Nemours and Company; DOCKET NUMBER: 2008-1571-AIR-E; IDENTIFIER: RN100216035; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: industrial organic chemicals plant; RULE VIOLATED: 30 TAC §116.115(c), NSR Permit Number 4351, SC Number 1, and THSC, §382.085(b), by failing to comply with permitted emissions limits; PENALTY: $5,450; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(9) COMPANY: Flowers Baking Company of Tyler, LLC; DOCKET NUMBER: 2008-1762-AIR-E; IDENTIFIER: RN100218221; LOCATION: Tyler, Smith County; TYPE OF FACILITY: bread baking; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), FOP Number O-02759, GTC, and THSC, §382.085(b), by failing to submit an annual permit compliance certification (PCC); PENALTY: $1,925; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(10) COMPANY: Guillermo Garcia, Jr.; DOCKET NUMBER: 2008-1697-WOC-E; IDENTIFIER: RN104188313; LOCATION: Agua Dulce, Nueces County; TYPE OF FACILITY: water operator; RULE VIOLATED: 30 TAC §30.381(b) and §30.5(a), the Code, §37.003, and THSC, §341.034(b), by failing to obtain a valid public water system operator license; PENALTY: $680; ENFORCEMENT COORDINATOR: Christopher Keffer, (512) 239-5610; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(11) COMPANY: City of Groesbeck; DOCKET NUMBER: 2008-1663-MWD-E; IDENTIFIER: RN101918944; LOCATION: Groesbeck, Limestone County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010182001, Interim Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a)(1), by failing to comply with the ammonia nitrogen permit limits; PENALTY: $2,580; SEP offset amount of $2,064 applied to RC&D - Abandoned Tire Clean-Up; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: James Hall; DOCKET NUMBER: 2008-1614-WOC-E; IDENTIFIER: RN105577894; LOCATION: Thornton, Limestone County; TYPE OF FACILITY: water operator; RULE VIOLATED: 30 TAC §§30.5(a), 30.331(b), and 30.381(b), the Code, §37.003, and THSC, §341.034(b), by failing to obtain a valid public water system and wastewater treatment operator license; PENALTY: $1,491; ENFORCEMENT COORDINATOR: Carlie Konkol, (361) 825-3100; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(13) COMPANY: Huntsman Petrochemical Corporation; DOCKET NUMBER: 2008-1586-AIR-E; IDENTIFIER: RN100219252; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: synthetic organic chemical plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 5972A, SC Number 1, FOP Number O-01320, SC Number 13, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), NSR Permit Number 5952A, SC Number 1, FOP Number O-01320, GTC, SC Number 13, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 36646, SC Number 18, FOP Number O-01320, SC Number 13, and THSC, §382.085(b), by failing to conduct volatile organic compound (VOC) monitoring on the wastewater conveyance; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 19823, SC Number 9(A), FOP Number O-02288, SC Number 16, and THSC, §382.085(b), by failing to conduct monitoring of the carbon absorption system; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 5952A, SC Number 1, FOP Number O-01320, SC Number 13, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 19823, SC Number 1, FOP Number O-02288, SC Number 16, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.201(a)(1)(B) and §122.143(4), FOP Number O-02288, GTC, and THSC, §382.085(b), by failing to notify the TCEQ regional office within 24 hours of a reportable emissions event; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), FOP Number O-01320, GTC, SC Number 13, NSR Permit Number 5952A, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), FOP Number O-01320, GTC, SC Number 13, NSR Permit Number 5952A, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $117,715; SEP offset amount of $47,086 applied to Jefferson County: Retrofit/Replacement of Heavy Equipment and Vehicles with Alternative Fueled Equipment and Vehicles; ENFORCEMENT COORDINATOR: Raymond Marlow, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(14) COMPANY: Hyman Farm Service, LLC; DOCKET NUMBER: 2008-1423-AIR-E; IDENTIFIER: RN105477863; LOCATION: Hearne, Robertson County; TYPE OF FACILITY: portable pipe reactor used for fertilizer manufacturing; RULE VIOLATED: THSC, §382.085(a) and (b), by failing to prevent ammonia emissions; and 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to have authorization to operate a source of air emissions; PENALTY: $6,150; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: KM Liquids Terminals, LLC; DOCKET NUMBER: 2008-1588-AIR-E; IDENTIFIER: RN100224815; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: petroleum liquids storage terminal; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 5171, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $10,000; SEP offset amount of $5,000 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: Mark Vasquez dba Maverick $1.50 Cleaners; DOCKET NUMBER: 2008-1198-MLM-E; IDENTIFIER: RN100618552; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: dry cleaning; RULE VIOLATED: 30 TAC §335.9(a)(2), by failing to submit to the TCEQ a complete and correct annual waste summary; 30 TAC §335.69(f)(4) and 40 CFR §§265.32, 265.34(a), and 265.37, by failing to equip the facility with emergency control equipment, by failing to have a designated emergency coordinator

for the facility, by failing to post the following information by the telephone at the facility: the name of the emergency coordinator, the location of emergency equipment, and the local fire departments telephone number, by failing to ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, by failing to offer immediate access to an internal alarm or emergency communication device, and by failing to make arrangements with local authorities; 30 TAC §335.62 and 40 CFR §262.11, by failing to conduct hazardous waste determinations for waste; 30 TAC §335.10(d)(1) and 40 CFR §262.23(a), by failing to properly maintain complete waste manifests for dry cleaning waste; 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by submitting the required registration form; 30 TAC §337.20(e)(3)(A), by failing to install a dike or other secondary containment structure around each dry cleaning unit and around each storage area for dry cleaning solvents, dry cleaning waste, or dry cleaning wastewater; and 30 TAC §337.20(d)(2) and 40 CFR §63.322(o)(1) and §63.324(3), by failing to keep records for the inspection of the dry cleaning system for vapor leaks; PENALTY: $9,337; ENFORCEMENT COORDINATOR: Danielle Porras, (512) 239-2602; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(17) COMPANY: Mine Service, Ltd.; DOCKET NUMBER: 2008-1894-AIR-E; IDENTIFIER: RN102607561; LOCATION: Waco, McLennan County; TYPE OF FACILITY: rock crusher; RULE VIOLATED: 30 TAC §116.110(4) and THSC, §382.085(b), by failing to meet the conditions of a permit by rule for a rock crusher; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Bryan Elliott, (512) 239-6162; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(18) COMPANY: Minsa Corporation; DOCKET NUMBER: 2008-1497-MLM-E; IDENTIFIER: RN102597200; LOCATION: Muleshoe, Bailey County; TYPE OF FACILITY: grain processing; RULE VIOLATED: 30 TAC §290.46(d)(2)(A) and §290.110(b)(4), by failing to maintain a minimum disinfectant residual of 0.2 milligram per liter free chlorine; 30 TAC §290.46(e)(4)(A) and THSC, §341.033(a), by failing to operate the facility under the direct supervision of a water works operator with a Class "D" or higher license; 30 TAC §290.41(c)(3)(K), by failing to properly seal the wellhead with a gasket or sealing compound; 30 TAC §290.41(c)(3)(M), by failing to provide a sampling tap on the discharge pipe of the well pump; 30 TAC §290.41(c)(3)(N), by failing to provide a flow measuring device; 30 TAC §290.41(c)(3)(O), by failing to maintain an intruder-resistant fence; 30 TAC §290.46(m), by failing to maintain the good working condition and general appearance of the water system's facilities and equipment; 30 TAC §290.46(f)(3)(D)(ii), by failing to maintain records of the annual inspections performed on the facility's two pressure tanks; 30 TAC §290.44(h)(1)(A), by failing to provide proper backflow prevention at locations within the distribution system where actual or potential contamination hazards exist; and 30 TAC §281.25(a)(4) and 40 CFR §122.26(a)(ii), by failing to obtain authorization for storm water discharges associated with industrial activity; PENALTY: $4,545; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(19) COMPANY: Mira Vista, Inc.; DOCKET NUMBER: 2008-1796-WQ-E; IDENTIFIER: RN104682257; LOCATION: Abilene, Taylor County; TYPE OF FACILITY: residential construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), 40 CFR §122.26(a), and TPDES General Permit Number TXR15S820, Part III, Section F.2(a)(ii) and 2(c)(i)(B), by failing to properly install and maintain storm water structural controls according to the manufacturer's specifications and install storm water structural controls at all down slope boundaries of the construction site; and 30 TAC §281.25(a)(4), 40 CFR §122.26(a), and TPDES General Permit Number TXR15S820, Part III, Section F.6(d), by failing to remove accumulations of sediment transported from the construction site; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(20) COMPANY: Pasadena Refining System, Inc.; DOCKET NUMBER: 2008-1554-AIR-E; IDENTIFIER: RN100716661; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.393(b), by failing to hold the required levels of highly-reactive VOC allowances; PENALTY: $4,975; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(21) COMPANY: PNS SHELL, INC.; DOCKET NUMBER: 2008-1429-PST-E; IDENTIFIER: RN101900173; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: $2,971; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(22) COMPANY: David Lloyd dba Prairieview Dairy; DOCKET NUMBER: 2008-1597-AGR-E; IDENTIFIER: RN101608230; LOCATION: Godley, Johnson County; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.39(b) and TPDES Concentrated Animal Feeding Operation (CAFO) General Permit Number TXG920503, Part III.A.9(a)(1), by failing to ensure that the required capacity in the retention control structure (RCS) is available to contain rainfall and rainfall runoff from the required rainfall event; 30 TAC §321.39(c)(2) and TPDES CAFO General Permit Number TXG920503, Part IV.B.3, by failing to provide written notification to the TCEQ ten days before a RCS cleaning is scheduled and written verification within five days after the cleaning has been completed; and 30 TAC §321.38(e)(2) and TPDES CAFO General Permit Number TXG920503, Part III.A.6(a)(1), by failing to have a licensed Texas professional engineer re-certify a modified RCS prior to use; PENALTY: $6,420; ENFORCEMENT COORDINATOR: Lauren Smitherman, (512) 239-5223; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: RIYAAN & NOORAIN ENTERPRISES, INC. dba Country Mart; DOCKET NUMBER: 2008-1612-PST-E; IDENTIFIER: RN104087762; LOCATION: Bastrop, Bastrop County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.221 and §115.222(3) and THSC, §382.085(b), by failing to comply with the control requirements for emission limitation; 30 TAC §115.221 and §115.222(6) and THSC, §382.085(b), by failing to ensure that each vapor balance system vent line is equipped with a pressure-relief valve set to open at a pressure of no more than eight ounces per square inch; 30 TAC §334.49(a) and the Code, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Michael Pace, (817) 588-5800; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(24) COMPANY: City of Rosebud; DOCKET NUMBER: 2007-1390-MWD-E; IDENTIFIER: RN101918423; LOCATION: Falls County; TYPE OF FACILITY: wastewater treatment plant;

RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10731001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, and the Code, §26.121(a)(1), by failing to comply with permitted effluent limits for total suspended solids (TSS) and total chlorine; PENALTY: $4,260; SEP offset amount of $3,408 applied to performing an erosion control project at three locations in Falls County and repair or replace sanitary sewer service lines, cleanouts, and caps on approximately three residences of low income homeowners in Falls County; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(25) COMPANY: City of Roscoe; DOCKET NUMBER: 2007-1815-MWD-E; IDENTIFIER: RN101917581; LOCATION: Roscoe, Nolan County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(5) and §317.4(j)(9) and TCEQ Permit Number WQ0010263001, Special Provisions Numbers 3 and 7, by failing to adequately maintain the treatment facility; 30 TAC §305.125(1) and TCEQ Permit Number WQ0010263001, Special Provisions Number 10, by failing to post "DO NOT DRINK WATER" signs; 30 TAC §319.7(a)(5), by failing to document compliance with quality assurance/quality control requirements for pH analysis; 30 TAC §305.125(1) and (5) and TCEQ Permit Number WQ0010263001, Special Provisions Number 3, by failing to annually calibrate the irrigation meter; 30 TAC §305.125(1) and TCEQ Permit Number WQ0010263001, Special Provisions Number 6, by failing to record and maintain the amount of effluent irrigated; and 30 TAC §305.125(1) and TCEQ Permit Number WQ0010263001, Special Provisions Number 4, by failing to prevent ponding on the irrigation site; PENALTY: $6,300; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(26) COMPANY: Texas Department of Transportation; DOCKET NUMBER: 2008-1735-MWD-E; IDENTIFIER: RN102075918; LOCATION: Victoria County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0012024001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for ammonia nitrogen and TSS; PENALTY: $6,380; SEP offset amount of $5,104 applied to RC&D - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 425-6010; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(27) COMPANY: The Rosebud Development, Ltd.; DOCKET NUMBER: 2009-0057-WQ-E; IDENTIFIER: RN105659213; LOCATION: Ellis County; TYPE OF FACILITY: home builder; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: Timpson Rural Water Supply Corporation; DOCKET NUMBER: 2008-0720-OSS-E; IDENTIFIER: RN101200111; LOCATION: Timpson, Shelby County; TYPE OF FACILITY: on-site sewage; RULE VIOLATED: 30 TAC §285.32(a)(5), by failing to install an additional two-way cleanout plus every 50 feet; 30 TAC §285.33(c)(1)(B), by failing to install an inspection port at the end of each gravel-less line and to install the gravel-less line level; and 30 TAC §285.3(d)(4) and THSC, §366.056(b), by failing to obtain approval before use of the facility; PENALTY: $570; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(29) COMPANY: Vopak Logistics Services USA, Inc.; DOCKET NUMBER: 2008-1545-AIR-E; IDENTIFIER: RN100223007; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: waste collection; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), FOP Number O-01637, GTC, and THSC, §382.085(b), by failing to submit a PCC; and 30 TAC §122.143(4) and §122.145(2)(C), FOP Number O-01637, GTC, and THSC, §382.085(b), by failing to submit the deviation report; PENALTY: $5,825; SEP offset amount of $2,330 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(30) COMPANY: Whiting Oil and Gas Corporation; DOCKET NUMBER: 2008-1733-AIR-E; IDENTIFIER: RN100236025; LOCATION: Yoakum County; TYPE OF FACILITY: oil and gas production plant; RULE VIOLATED: 30 TAC §116.615(2), FOP Number O-02425, SC Number (b)(7)(E)(ii), Standard Permit Number 47427, General Condition Number 2, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1) and §116.615(10) and THSC, §382.085(b), by failing to notify the TCEQ within 24 hours after discovery on Incident Number 108281; PENALTY: $1,950; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3100; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

TRD-200900318
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 27, 2009

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Notice of a Proposed Amendment and Renewal of a General Permit Number TXG920000

The Texas Commission on Environmental Quality (TCEQ) proposes to amend and renew General Permit No. TXG920000 authorizing the discharge of manure, sludge, and wastewater from concentrated animal feeding operations (CAFOs) under specific circumstances into and adjacent to water in the state. This general permit applies to the entire state of Texas. General Permits are authorized by §26.040 of the Texas Water Code.

PROPOSED GENERAL PERMIT. The Executive Director has prepared a draft renewal with amendments of an existing general permit that authorizes the discharge of manure, sludge, and wastewater from CAFOs under specific circumstances. The general permit is applicable to Texas Pollutant Discharge Elimination System (TPDES) and State-only CAFOs statewide. No significant degradation of high quality waters is expected and existing uses will be maintained.

The executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) according to Coastal Coordination Council regulations, and has determined that the action is consistent with applicable CMP goals and policies.

A copy of the proposed general permit and fact sheet are available for viewing and copying at the TCEQ Office of the Chief Clerk located at the TCEQ Austin Office, 12100 Park 35 Circle, Building F. These documents will also be available at the TCEQ's sixteen (16) regional offices and on the TCEQ's website at: http://www.tceq.state.tx.us/permitting/water_quality/wastewater/general/index.html.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments about this application. In addition, the TCEQ will hold a

public meeting on this general permit. A public meeting is not a contested case hearing. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the general permit. The public meeting will be held as follows:

March 17, 2009 at 1:00 p.m. at the TCEQ Austin Office, 12100 Park 35 Circle, Building F, Room 2210.

Written public comments must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.state.tx.us/about/comments.html within 30 days from the date this notice is published in the *Texas Register* or at the end of the public meeting, whichever is later.

APPROVAL PROCESS. After the comment period, the Executive Director will consider all the public comments and prepare a written response. The response will be filed with the TCEQ Office of the Chief Clerk at least 10 days before the scheduled Commission meeting when the Commission will consider approval of the general permit. The Commission will consider all public comment in making its decision and will either adopt the Executive Director's response or prepare its own response. The Commission will issue its written response on the general permit at the same time the Commission issues or denies the general permit. A copy of any issued general permit and response to comments will be made available to the public for inspection at the agency's Austin and regional offices. A notice of the Commissioner's action on the proposed general permit and a copy of its response to comments will be mailed to each person who made a comment. Also, a notice of the Commission's action on the proposed general permit and the text of its response to comments will be published in the *Texas Register.*

MAILING LIST. In addition to submitting public comments, you may request to be placed on a mailing list to receive future public notices mailed by the Office of the Chief Clerk. You may request to be added to: (1) the mailing list for this specific general permit; (2) the mailing list for a specific county; and/or (3) the mailing list for a specific applicant name and permit number. Clearly specify which list(s) to which you wish to be added and send your request to TCEQ Office of the Chief Clerk at the address above. Unless you otherwise specify, you will be included only on the mailing list for this specific general permit.

AGENCY CONTACTS AND INFORMATION. If you need more information about this general permit or the permitting process, please call the TCEQ Office of Public Assistance, toll-free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us.

Further information may also be obtained by calling Laurie Fleet at (512) 239-5445.

Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200900317
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 27, 2009

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Notice of Availability of the Draft January 2009 Update to the Water Quality Management Plan for the State of Texas

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the draft January 2009 Update to the Water Quality Management Plan for the State of Texas (draft WQMP update).

The Water Quality Management Plan (WQMP) is developed and promulgated in accordance with the requirements of federal Clean Water Act, §208. The draft WQMP update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once the commission certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission. The draft WQMP update may contain service area populations for listed wastewater treatment facilities, designated management agency information and total maximum daily load (TMDL) updates.

A copy of the January 2009 draft WQMP update may be found on the commission's web site located at *http://www.tceq.state.tx.us/nav/eq/eq_wqmp.html*. A copy of the draft may also be viewed at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

Written comments on the draft WQMP update may be submitted to Nancy Vignali, Texas Commission on Environmental Quality, Water Quality Division, MC 150, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be submitted no later than 5:00 p.m. on March 9, 2009. For further information or questions, please contact Ms. Vignali at (512) 239-1303 or by e-mail at *nvignali@tceq.state.tx.us*.

TRD-200900322
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 27, 2009

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Notice of Meeting on March 19, 2009 in Pearland, Brazoria County, Texas Concerning the Camtraco Enterprises, Inc. Facility

The purpose of the meeting is to obtain public input and information concerning proposal of the facility to the state registry of Superfund sites, the identification of potentially responsible parties and the proposal of non-residential land use.

The Texas Commission on Environmental Quality (TCEQ or commission) is required under the Texas Solid Waste Disposal Act, Health and Safety Code, Chapter 361, as amended (the Act), to annually publish a state registry that identifies facilities that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The most recent registry listing of these facilities was published in the October 10, 2008, issue of the *Texas Register* (33 TexReg 8608).

Pursuant to the Act, §361.184(a), the commission must publish a notice of intent to list a facility on the state registry of state Superfund sites in the *Texas Register* and in a newspaper of general circulation in the county in which the facility is located. With this publication, the commission hereby gives notice of a facility that the executive director has determined eligible for listing, and which the executive director proposes to list on the state registry. By this publication, the commission also gives notice pursuant to the Act, §361.1855, that it proposes a land use other than residential as appropriate for the facility identified. The commission proposes a commercial/industrial land use designa-

tion. Determination of appropriate land use may impact the remedial investigation and remedial action for Camtraco Enterprises, Inc. (the Site). The TCEQ is proposing a land use designation of commercial/industrial based on the existing land use of the property, as is prescribed in the Texas Risk Reduction Program rule at 30 TAC §350.53.

This publication also specifies the general nature of the potential endangerment to public health and safety or the environment as determined by information currently available to the executive director. This notice of intent to list this facility will also be published on February 11, 2009, in the *Pearland Reporter News.*

The facility proposed for listing is the Site, located at 18823 Amoco Drive in Pearland, Brazoria County, Texas. The geographic coordinates of the Site are Latitude 29 degrees 30 minutes 15.36 seconds North and Longitude 95 degrees 16 minutes 12.96 seconds West. The description of the Site is based on information available at the time the Site was evaluated with the Hazard Ranking System (HRS). The HRS is the principal screening guide used by the commission to evaluate potential, relative risk to public health and the environment from releases or threatened releases of hazardous substances. The Site description may change as additional information is gathered on the sources and extent of contamination.

Texas Health and Safety Code, §361.184(a) requires that the notice of intent to list the facility specify "... the general nature of the potential endangerment to public health and safety or the environment as determined by information available to the executive director at the time...". The Site is identified as a 3.577 acre site located at 18823 Amoco Drive in Pearland, Brazoria County, Texas and was operated as a fuel storage and fuel blending/distillation facility. The blending/distillation operations employed six 18,000 gallon tanks, seven 10,000 gallon tanks, one 36,000 gallon tank and one 2,000 gallon underground storage tank (UST). The Site also accepted barge cleaning wastes. Several investigations were conducted by various regulatory agencies during the active life of the facility as a result of complaints from nearby residents. Investigations identified evidence of on-site spills, air violations, and buried drums. The Site has been inactive since 1992 and is presently abandoned. The access to the Site is restricted by a fence and locked gate.

In February 2005, the TCEQ began to routinely collect samples from private residential water wells within a 1/2-mile radius of the Site. Observed releases of volatile and inorganic constituents are documented by chemical analysis of drinking water samples.

In May 2005, the TCEQ began conducting sampling events on-site and off-site. Sampling of the on-site and off-site soil and groundwater detected chemicals, including, arsenic, barium, chromium, lead, mercury, bis(2-ethylhexyl)adipate, bis(2-ethylhexyl)phthalate, diethyl phthalate, di-n-butyl phthalate, methylene chloride, 1,4 dichromobenzene, toluene, and trichloroethene (TCE).

In August 2005, the TCEQ conducted a Removal Action (RA) at the Site. The RA consisted of removal and demolition of 14 aboveground storage tanks (ASTs) from the tank farm and removal of one UST. The tank farm was constructed on a flat concrete slab with a soil berm surrounding the tank farm. The sampling and analysis of the tank contents revealed the presence of benzene, 2-butanone, tetrachloroethene and 1,1,1-trichloroethane.

During the removal of the UST, staining and odor were noted in the surrounding soil. It was also noted that the bottom of the UST developed a hole due to corrosion. Analytical data of the soil collected from the UST basin indicated presence of acetone, tetracholoethene, 1,1-dichloroethene, methyl tert-butyl ether (MTBE), and toluene. To determine vertical extent of soil contamination, four soil borings were advanced to 12 feet below the UST basin. Analysis of the soil samples collected from soil borings indicated the presence of acetone, trichloroethene, cis-1,2-dichloroethene, MTBE, and vinyl chloride between a depth of four feet to ten feet. The contaminated soil was excavated and a total of 3,600 cubic yards of contaminated soil was transported for off-site disposal at Waste Management's Coastal Plain Landfill in Alvin, Texas.

In November 2005, in order to determine the extent of soil contamination, five direct push soil borings were advanced to a depth of 20 feet in a contaminated area 30 feet west and north of the former UST basin. Subsurface soil samples collected from the borings documented presence of trichloroethene, and cis-1,2-dichloroethene. In an effort to investigate the potential releases to the groundwater TCEQ installed six monitor wells on-site in May 2006; these wells have been routinely monitored since installation. The chemicals detected in the groundwater include trichloroethene, cis-1,2-dichloroethene, 2-butanone, MTBE, acetone and toluene.

A public meeting will be held March 19, 2009, at 7:00 p.m., at the Pearland Junior High South, located at 4719 Bailey Road, Pearland, Texas 77584. The purpose of this meeting is to obtain additional information regarding the Site relative to its eligibility for listing on the state Registry, identify additional potentially responsible parties, and obtain public input and information regarding the appropriate use of land on which the facility that is the subject of this notice is located. The public meeting is not a contested case hearing under the Texas Administrative Procedure Act (Texas Government Code, Chapter 2001).

All persons desiring to make comments may do so prior to or at the public meeting. All comments submitted prior to the public meeting must be received by 5:00 p.m., on March 18, 2009 and should be sent in writing to Mr. Subhash C. Pal, P.E., Texas Commission on Environmental Quality, Remediation Division, MC 136, P.O. Box 13087, Austin, Texas 78711-3087 or by facsimile at (512) 239-2450. The public comment period for this action will end at the close of the public meeting on March 19, 2009.

A portion of the record for this Site, including documents pertinent to the executive director's determination of eligibility, is available for review at the Pearland Library, located at 3522 Liberty Drive, Pearland, Texas 77581, during regular business hours. Copies of the complete public record file may be obtained during regular business hours or at the commission's Records Management Center, Building E, First Floor, Records Customer Service, MC 199, Austin, Texas 78753, telephone number (800) 633-9363 or (512) 239-2920. Photocopying of file information is subject to payment of a fee. Parking is available for persons with disabilities on the east side of Building D, convenient to access ramps that are between Buildings D and E.

For further information about this Site or the public meeting, please call Crystal Taylor, TCEQ Community Relations, at (800) 633-9363. Information is also available regarding the state Superfund program at *www.tceq.state.tx.us/remediation/superfund/index.html.*

TRD-200900332
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 27, 2009

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code

(TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 9, 2009**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 9, 2009**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: 5D Drilling & Pump Service, Inc. dba Davenport Drilling and Pump Service; DOCKET NUMBER: 2008-0743-MLM-E; TCEQ ID NUMBER: RN105455596; LOCATION: 10293 Farm-to-Market (FM) Road 1560 North, San Antonio, Bexar County; TYPE OF FACILITY: water well drilling operation; RULES VIOLATED: 30 TAC §327.3, by failing to notify TCEQ as soon as possible, but not later than 24 hours after the discovery of the spill or discharge; 30 TAC §327.5 and §335.4 and TWC, §26.121, by failing to immediately abate and contain the spill or discharge and prevent an unauthorized discharge of industrial solid waste; 30 TAC §330.15, by failing to dispose of municipal solid waste at an approved facility; 30 TAC §111.201 and Texas Health and Safety Code (THSC), §382.085(b), by allowing outdoor burning without authorization from the TCEQ or meeting an exemption to the prohibition; 30 TAC §334.127(a), by failing to register with the TCEQ aboveground storage tanks containing a petroleum product; and 30 TAC §213.4(a)(1), by failing to submit and obtain approval of an Edwards Aquifer Protection Plan prior to conducting regulated activities within the Edwards Aquifer Transition Zone; PENALTY: $11,426; STAFF ATTORNEY: Benjamin Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Bosque County; DOCKET NUMBER: 2007-1844-MSW-E; TCEQ ID NUMBER: RN104575873; LOCATION: intersection of FM Road 56 and County Road 3440, approximately two miles east of Cayote, Bosque County; TYPE OF FACILITY: maintenance facility; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste at the facility; PENALTY: $3,150; STAFF ATTORNEY: Barham A. Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: Brian Fabre dba Fay Ben Mobile Home Park; DOCKET NUMBER: 2007-0972-PWS-E; TCEQ ID NUMBER: RN101247328; LOCATION: 7346 County Road 6100, Shallowater, Lubbock County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.121(a), by failing to maintain an up-to-date chemical and microbiological monitoring plan; 30 TAC §290.46(v), by failing to install all water system electrical wiring in accordance with local or national electrical codes; 30 TAC §290.46(t), by failing to post a legible sign displaying the name of the water supply and an emergency telephone number where a responsible official can be contacted at each production, treatment, and storage facility; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a water-tight condition; and 30 TAC §290.41(c)(3), by failing to meet the construction, disinfection, protection, and testing requirements prior to placing a public water supply well into service; PENALTY: $1,612; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, R-12, (713) 422-8914; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3520, (806) 796-7092.

(4) COMPANY: City of El Paso; DOCKET NUMBER: 2005-0994-PST-E; TCEQ ID NUMBER: RN100250091; LOCATION: 700 San Francisco Avenue, El Paso, El Paso County; TYPE OF FACILITY: public transportation facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A), (2)(A)(i)(III), and (d)(1)(B)(ii), and TWC, §26.3475(a) and (c)(1), by failing to monitor underground storage tanks (UST) and associated piping for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.10(b), by failing to provide legible copies of all required records pertaining to a UST system for inspection by commission personnel; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the UST identification number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to the UST registration and self-certification form; and 30 TAC §334.72(3) and §334.74, by failing to report a suspected release to the TCEQ within 24 hours of the discovery, and failing to immediately investigate and confirm all suspected releases of regulated substances within 30 days; PENALTY: $73,980; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(5) COMPANY: Diamond Shamrock Refining Company, L.P.; DOCKET NUMBER: 2007-0314-AIR-E; TCEQ ID NUMBER: RN100210517; LOCATION: 6701 FM 119, Sunray, Moore County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 40 Code of Federal Regulations (CFR) §60.105(c), THSC, §382.085(b), and 30 TAC §101.20(1), by failing to record the Fluid Catalytic Cracking Unit (FCCU) coke burn-off rate and hours of operation; THSC, §382.085(b), 30 TAC §101.20(3) and §116.715(a), and New Source Review Flexible Permit 9708/PSD-TX-861M2, Special Condition Number 8(B), by failing to operate the Main Refinery Flare (EPN FL-1) with a pilot flame present at all times and with an automatic re-ignition system; 40 CFR §60.663(b)(2), THSC, §382.085(b), and 30 TAC §101.20(1), by failing to operate the Main Refinery Flare (EPN FL-1) with a flow indicator that provides a record of vent stream flow to the flare at least once every hour; PENALTY: $30,750; Supplemental Environmental Project (SEP) offset amount of $15,375 applied to Texas Association of Resource Conservation and Development Areas, Inc. (RC&D) - Unauthorized Trash Dump Clean Up; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(6) COMPANY: Lehigh Cement Company; DOCKET NUMBER: 2007-1345-AIR-E; TCEQ ID NUMBER: RN100218254; LOCA-

TION: 100 South Wickson Road, Woodway, McLennan County; TYPE OF FACILITY: cement manufacturing plant; RULES VIOLATED: 30 TAC §122.146(1) and §122.145(2) and THSC, §382.085(b), by failing to submit annual compliance certifications and associated deviation reports; 30 TAC §§101.20(3), 116.115(c), 112.143(4), and 122.145(1)(A), THSC, §382.085(b), New Source Review Permit Number 9399/PSD-TX-624, Special Condition Number 13, and Federal Operating Permit Number O-1035, Special Condition Number 7, by failing to submit Continuous Emission Monitoring System Excess Emission reports; 30 TAC §101.20(1), 40 CFR §60.63, and THSC, §382.085(b), by failing to conduct monthly visual opacity emission readings; 30 TAC §113.690 and §122.143(4), 40 CFR §63.1344(a), THSC §382.085(b), and Federal Operating Permit Number O-1035, Special Condition Number 1D, by failing to comply with the exhaust gas temperature standard; 30 TAC §117.3120(a) (previously 30 TAC §117.283(a)) and THSC, §382.085(b), by failing to comply with nitrogen oxide limits currently under a State Implementation Plan; 30 TAC §117.3120(c) (previously 30 TAC §117.283(c)) and THSC, §382.085(b), by failing to submit a State Implementation Plan Annual Emission Reports. PENALTY: $209,100; SEP offset amount of $104,550 applied to Texas Congress of Parents and Teacher d/b/a Texas Parent Teacher Association (PTA) - Texas PTA Clean School Buses; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: Maria A. Beltran dba 1017 Cafe; DOCKET NUMBER: 2007-1803-PWS-E; TCEQ ID NUMBER: RN102679461; LOCATION: San Isidro, Starr County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(f)(3) and §290.122(b)(2)(B) and THSC, §341.031(a), by failing to post public notice of exceeding the total coliform maximum contaminant level; 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(B), by failing to collect and submit at least five routine water samples during the months following a total coliform positive sample result and by failing to provide public notification of the failure to collect water samples; and 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to collect and submit monthly water samples for bacteriological analysis for the months of February and May 2007 and by failing to provide public notification of the failure to collect water samples in February 2007; PENALTY: $2,500; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(8) COMPANY: Messer Construction Company, Inc.; DOCKET NUMBER: 2007-1331-AIR-E; TCEQ ID NUMBER: RN105240550; LOCATION: 5 1/2 miles south of the intersection of United States 60 and County Road BB, Dawn, Deaf Smith County; TYPE OF FACILITY: rock crusher facility; RULES VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain authorization to construct and operate a rock crusher; PENALTY: $50,000; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(9) COMPANY: Muhammad Altaf dba Country Food Store; DOCKET NUMBER: 2005-0200-PST-E; TCEQ ID NUMBER: RN101444941; LOCATION: 754 Highway 96, Buna, Jasper County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72(3)(A), by failing to report to the TCEQ within 24 hours a suspected release indicated by monitoring results associated with vapor monitoring; 30 TAC §334.74(1)(A), by failing to conduct an investigation and confirmation steps within 30 days of discovery of a suspected release; 30 TAC §334.48(c), by failing to conduct inventory control; 30 TAC §334.8(c)(5)(C), by failing to permanently tag or label each UST fill tube at the facility with the number used to identify the tank on the registration and self-certification form filed with the commission; 30 TAC §334.50(b)(2)(A)(i)(III), by failing to perform an annual performance test on the line leak detectors; PENALTY: $19,500; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(10) COMPANY: Wayne Moerman dba XXX Dairy; DOCKET NUMBER: 2007-0957-AGR-E; TCEQ ID NUMBER: RN102586773; LOCATION: State Highway 16 approximately 2.5 miles south of the intersection of State Highway 16 and United States Highway 67/377, Comanche County; TYPE OF FACILITY: dairy farm; RULES VIOLATED: 30 TAC §321.37(d) and §321.36(k) and Concentrated Animal Feeding Operation (CAFO) General Permit Number TXG920040 Parts II.A, III.A.9(a)(4), and V.D., by failing to properly design, construct, operate, and maintain retention control structures to contain and prevent discharges of manure, litter, or wastewater from a CAFO production area; 30 TAC §§321.46(a)(4), 321.34(f)(3), and 321.38(e)(3), (2), and (g)(3)(E), and CAFO General Permit Number TXG920040 Parts III.A.3, and III.A.6(a)(1), 6(a)(2), and 6(b), by failing to revise the pollution prevention plan before operation of a new control facilities; 30 TAC §321.36(j)(4) and CAFO General Permit Number TXG920040 Part IV.B.1(d), by failing to include total manure, litter, and wastewater transferred to other persons in the Annual Report; PENALTY: $1,600; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

TRD-200900320
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 27, 2009

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 9, 2009**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO 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 DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 9, 2009**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Hector Silva, Sr.; DOCKET NUMBER: 2008-0377-PST-E; TCEQ ID NUMBER: RN101737773; LOCATION: 604 West Comal Street, Pearsall, Frio County; TYPE OF FACILITY: underground storage tanks; RULES VIOLATED: 30 TAC §334.6, by failing to provide written notification to the agency at least 30 days prior to initiating the construction activities; and 30 TAC §334.47(a)(2) and §334.55(b) and TCEQ Agreed Order Docket Number 2004-1776-PST-E, Ordering Provision Number 2.a.i, by failing to comply with permanent removal from service requirements for underground storage tanks and by failing to permanently remove from service; PENALTY: $111,800; STAFF ATTORNEY: Barham A. Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Hong Nguyen dba Lee Dry Cleaners III; DOCKET NUMBER: 2008-1130-DCL-E; TCEQ ID NUMBER: RN104096680; LOCATION: 12803 Homestead Road, Houston, Harris County; TYPE OF FACILITY: operates a retail commercial establishment; RULES VIOLATED: 30 TAC §337.11(e), Texas Health and Safety Code (THSC), §374.102, and TCEQ Default Order Docket Number 2006-1159-DCL-E, Ordering Provision 2.a, by failing to renew the facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning drop station; and 30 TAC §337.14(c), Texas Water Code (TWC), §5.702, and TCEQ Default Order, Docket Number 2006-1159-DCL-E, Ordering Provision 1, by failing to pay outstanding dry cleaner fees and associated late fees for TCEQ Financial Account Number 24002069 and by failing to pay the administrative penalty for TCEQ Default Order Docket Number 2006-1159-DCL-E, Account Number 23800529; PENALTY: $1,950; STAFF ATTORNEY: Rebecca Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(3) COMPANY: WW Cattle Feeds, Inc.; DOCKET NUMBER: 2007-0775-WQ-E; TCEQ ID NUMBER: RN100756931; LOCATION: 6391 Old Agnes Road, Poolville, Parker County; TYPE OF FACILITY: livestock feed processing facility; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with an industrial activity to water in the State through an individual permit or multi-sector general permit; PENALTY: $3,640; STAFF ATTORNEY: Rebecca Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Webera, Inc. dba Max Dry Clean Super Store; DOCKET NUMBER: 2008-1264-DCL-E; TCEQ ID NUMBER: RN104992847; LOCATION: 9911 Lake June Road, Dallas, Dallas County; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: 30 TAC §337.11(e) and THSC, §374.102(a) and TCEQ Commission Order Docket Number 2006-0997-DCL-E Ordering Provision 2.a, by failing to complete and submit the required registration renewal form to the TCEQ for a dry cleaning drop station facility; and 30 TAC §337.14(c) and TWC, §5.702 and TCEQ Commission Order Docket Number 2006-0997-DCL-E Ordering Provisions 1 and 2.b, by failing to pay outstanding administrative penalty for TCEQ Financial Account Numbers 23800131 and 24002173 and dry cleaner fees; PENALTY: $3,606; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200900321
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 27, 2009

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Notice of Opportunity to Comment on Shut Down/Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 9, 2009**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO 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 S/DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 9, 2009**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Almeda, Inc. dba Downtown Tiger Mart; DOCKET NUMBER: 2006-1727-PST-E; TCEQ ID NUMBER: RN102532801; LOCATION: 2111 Fannin Street, Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES 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 Texas Water Code (TWC), §26.3475(c)(1), by failing to monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); 30 TAC §334.50(d)(1)(B)(iii)(I) and TWC, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances as a motor fuel; 30 TAC §334.8(c)(5)(B)(ii), by failing to timely renew a previously issued TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date of the delivery certificate; 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 at the facility; PENALTY: $55,080; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

TRD-200900319
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 27, 2009

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Notice of Water Quality Applications

The following notices were issued during the period of January 14, 2009 through January 23, 2009.

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

CITY OF AMHERST has applied for a renewal of Permit No. WQ0010118001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 122,000 gallons per day via surface irrigation of 32 acres of non-public access pasture land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located northeast of Amherst, approximately 0.5 mile east and 0.75 mile north of the intersection of Farm-to-Market Road 37 and First Street in Lamb County, Texas.

CITY OF GAINESVILLE has applied for a new permit, Proposed Permit No. WQ0004856000, to authorize the land application of sewage sludge for beneficial use on 301 acres. This permit will not authorize a discharge of pollutants into waters in the State. The land application site is located at the City of Gainesville Municipal Airport on County Road 404, approximately 0.4 mile west of the intersection of County Road 404 and Farm-to-Market Road 1200 in Cooke County, Texas.

CITY OF LUFKIN has applied for a renewal of Permit No. WQ0004585000, which authorizes the land application of sewage sludge for beneficial use. The current permit authorizes land application of sewage sludge for beneficial use on 150 acres. This permit will not authorize a discharge of pollutants into waters in the State. The land application site is located approximately one and one-fourth miles east of the intersection of State Highway 287 and Farm-to-Market Road 325, approximately two and one-fourth miles east of the City of Lufkin in Angelina County, Texas.

CITY OF SNOOK has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0011430001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The facility is located approximately 1.4 miles northeast of the intersection of Farm-to-Market Road 60 and Farm-to-Market-Road 2155 in Burleson County, Texas.

CITY OF STRAWN has applied for a renewal of TPDES Permit No. WQ0010326001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located at 412 Palo Pinto Avenue, approximately 500 feet east of Palo Pinto Avenue and 500 feet north of State Highway 108 on the east side of the City of Strawn in Palo Pinto County, Texas.

HFOTCO LLC which operates the Houston Fuel Oil Terminal Company, a private bulk petroleum storage facility, has applied for a major amendment to TPDES Permit No. WQ0002277000 to authorize the discharge of steam condensate via Outfall 001, the addition of a new wastewater treatment system and its associated Outfall 021. The current permit authorizes the discharge of treated storm water and facility wastewater (ballast water and boiler blowdown) on an intermittent and flow variable basis via Outfall 001. The facility is located at 16642 Jacintoport Boulevard, on the north bank of Houston Ship Channel, in the City of Houston, Harris County, Texas.

The Texas Commission on Environmental Quality's (TCEQ) Executive Director has reviewed this action for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

JOHANNES KOSTER AND DEBORAH MICHELLE KOSTER for a major amendment of, and conversion to an individual permit, TPDES Registration No. WQ0003159000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to expand an existing Dairy facility from 750 head to a maximum capacity of 999 head, of which 800 head are milking cows and increase the land application acreage from 32.5 acres to 347 acres. The facility is located on the west side of the intersection of State Highway 16 and Farm-to-Market Road 2861, which is approximately five miles north of Comanche in Comanche County, Texas.

KLAAS TALSMA for a Renewal of TPDES Permit No. WQ0003145000, for a CAFO, to authorize the applicant to operate an existing Dairy facility at a maximum capacity of 2,200 head of which 2,200 head are milking cows. The facility is located on the south side of County Road 540, approximately three-tenths mile southwest from the intersection of County Road 540 and County Road 209. This intersection is located approximately four miles from the intersection of County Road 209 and US Highway 67 in Erath County, Texas.

LONG POINT ESTATES INC has applied for a renewal of TPDES Permit No. WQ0014512001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility will be located 4,000 feet southwest of the

intersection of Farm-to-Market Road 1994 and Farm-to-Market Road 361 in Fort Bend County, Texas.

LUMINANT GENERATION COMPANY LLC which operates Stryker Steam Electric Station (SES), a steam electric generation station, has applied for a renewal of TPDES Permit No. WQ0000946000, which authorizes the discharge of once through cooling water and previously monitored effluents (PMEs; low volume wastewater and storm water runoff via internal Outfall 101 and metal cleaning waste and low volume wastewater via internal Outfall 201) at a daily average flow not to exceed 575,000,000 gallons per day via Outfall 001. The facility is located on the west shore of Lake Striker, off of Farm-to-Market Road 2420, approximately seventeen miles east of the City of Jacksonville, Cherokee County, Texas.

PRATERS FOODS INC which operates Praters Foods, has applied for a major amendment WQ0004440000 to authorize an increase in the daily average flow from 36,000 gallons per day to 50,000 gallons per day, an increase in the irrigation area from 25 acres to 70 acres; and the addition of a new storage pond. The current permit authorizes the disposal of frozen food washwater at an annual average flow not to exceed 36,000 gallons per day. This permit will not authorize a discharge of pollutants into water in the State. This permit will not authorize a discharge of pollutants into water in the State. The facility and land application site are located approximately 0.25 miles east of the intersection of 114th Street and University Avenue; south-southeast of the City of Lubbock, Lubbock County, Texas.

RELIANT PROCESSING GROUP LLC which operates Reliant Processing-Muleshoe Facility, has applied for a major amendment to TCEQ Permit No. WQ0004811000 for a major amendment to TCEQ Permit No. WQ0004811000 to authorize an increase in the daily average flow from 4,320 gallons per day to 10,000 gallons per day; to increase the daily maximum flow from 5,000 gallons per day to 12,000 gallons per day; and to increase the hydraulic application rate to 4.63 acre-feet/acre/year. The current permit authorizes the disposal of condenser once-through cooling tower condensate at a daily average flow not to exceed 4,320 gallons per day and a daily maximum flow not to exceed 5,000 gallons per day via irrigation at a hydraulic application rate not to exceed 2.48 acre-feet/acre/year. This permit will not authorize a discharge of pollutants into water in the State. The facility and land application site are located six miles west of Muleshoe on Farm-to-Market Road 1760 in the City of Muleshoe, Bailey County, Texas.

SOUTH CENTRAL WATER COMPANY applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014833001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. TCEQ received an amended application from Aqua Water Supply Corporation, 415 Old Austin Highway, Bastrop, Texas 78602, listing it as the sole Applicant. In addition, Aqua Water Supply Corporation amended its application to reduce the daily average flow from three phases (50,000, 150,000, and 750,000 gallons per day) to two phases (50,000 and 250,000 gallons per day). The facility will be located approximately 1.25 miles north of the intersection of Old 71 and Highway 71 in Bastrop County, Texas.

SOUTHERN HORIZONS LP has applied for a new permit, proposed TPDES Permit No. WQ0014922001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. The facility will be located approximately 100 linear feet south of the intersection of Highway 59 and King Port Drive in Montgomery County, Texas.

SYNAGRO OF TEXAS CDR INC has applied for a renewal of Permit No. WQ0004451000, which authorizes the land application of sewage sludge for beneficial use. The current permit authorizes land application of sewage sludge for beneficial use on 185.27 acres. The land application site is located at near the City of Chesterville, approximately 900 feet west of the intersection of Farm-to-Market Road 2764 and Farm-to-Market Road 1093 in Colorado County, Texas.

TEXAS A&M UNIVERSITY AT GALVESTON has applied for a renewal with changes to TPDES Permit No. WQ0011085001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The permittee has requested that the permitted volume be changed to a flow not to exceed a daily average flow of 200,000 gallons per day. The facility is located at Texas A&M University at Galveston (Mitchel Campus) on the east side of Seawolf Parkway near the north end of Pelican Island Causeway in the City of Galveston in Galveston County, Texas.

TRINITY RURAL WATER SUPPLY CORPORATION has applied for a new permit, proposed TPDES Permit No. WQ0014902001, to authorize the discharge of treated filter backwash effluent and clarifier blowdown from a water treatment plant at a daily average flow not to exceed 150,000 gallons per day. The facility will be located at 5004 south State Highway 19, approximately 4 miles south of Trinity in Trinity County, Texas.

UPPER LEON RIVER MUNICIPAL WATER DISTRICT has applied to the TCEQ for a renewal of TPDES Permit No. WQ0014206001, which authorizes the discharge of filter backwash water from a water treatment plant at a daily average flow not to exceed 249,000 gallons per day. The facility is located on Farm-to-Market Road 2861, 1.8 miles north of the intersection of Farm-to-Market Road 2861 and U.S. Highway 377, which is located 4.6 miles west of the City of Proctor in Comanche County, Texas.

UPPER LEON RIVER MUNICIPAL WATER DISTRICT has applied for a renewal of TPDES Permit No. WQ0014544001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 65,000 gallons per day. The facility is located approximately 300 feet south of Farm-to-Market Road 2861, near the intersection of Farm-to-Market Road 2861 and County Road 420A, and approximately 200 feet west of County Road 420A in Comanche County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, toll-free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200900341
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 28, 2009

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Proposal for Decision

The State Office of Administrative Hearings (SOAH) issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality (commission or TCEQ) on January 26, 2009, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Gloria Serenil; SOAH Docket No. 582-09-1030; TCEQ Docket No. 2007-1503-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Gloria Serenil on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is

Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-200900342
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 28, 2009

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Proposal for Decision

The State Office of Administrative Hearings (SOAH) issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality (commission or TCEQ) on January 27, 2009, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Kathleen Harless; SOAH Docket No. 582-09-0946; TCEQ Docket No. 2008-0402-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Kathleen Harless on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-200900343
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 28, 2009

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Texas Facilities Commission

Request for Proposals #303-9-11077

The Texas Facilities Commission (TFC), on behalf of the Texas Health and Human Services Commission, announces the issuance of Request for Proposals (RFP) #303-9-11077. TFC seeks a five year lease of approximately 2,901 square feet of office space in Zapata, Texas.

The deadline for questions is February 13, 2009 and the deadline for proposals is February 20, 2009 at 3:00 p.m. The award date is March 18, 2009. 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 a 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 TFC Purchaser Sandy Williams at (512) 475-0453. 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=80760.*

TRD-200900328
Kay Molina
General Counsel
Texas Facilities Commission
Filed: January 27, 2009

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Department of State Health Services

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 Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Mission	Mission Hospital Inc. dba Mission Regional Medical Center	L06192	Mission	00	12/31/08
Throughout Tx	R & R Testing Inc.	L06222	Channelview	00	01/15/09
Throughout Tx	Radiation Environmental Management L.L.C.	L06217	Graham	00	01/06/09
Throughout Tx	Earthco L.L.C.	L06213	Harlingen	00	12/31/08
Throughout Tx	Fugro Inc. dba Fugro Alluvial Offshore Ltd.	L06216	Houston	00	12/23/08

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Aransas Pass	North Bay General Hospital dba North Bay Hospital	L03446	Aransas Pass	36	01/05/09
Austin	Capital Cardiovascular Consultants	L05590	Austin	14	01/05/09
Austin	Daughters of Charity Health Services of Austin dba Dell Children's Medical Center of Central Texas	L06065	Austin	08	01/09/09
Austin	Daughters of Charity Health Services of Austin dba Seton Medical Center Austin	L02896	Austin	99	01/08/09
Baytown	Lanxess Corporation	L05810	Baytown	06	12/30/08
Bedford	Columbia North Hills Outpatient Imaging Center Subsidiary L.P. dba Bedford Imaging Center	L03455	Bedford	48	12/23/08
Bedford	Metroplex Surgicare Partners Ltd. dba Baylor Surgicare of Bedford	L05764	Bedford	05	01/14/09
Comanche	Comanche County Consolidated Hospital Dist. dba Comanche County Medical Center	L06200	Comanche	01	12/03/08
Dallas	Methodist Hospitals of Dallas Radiology Svcs.	L00659	Dallas	61	01/14/09
Ferris	Fred Maese M.D. P.A. dba Ferris Heart Center	L05409	Ferris	06	01/06/09
Galena Park	United States Gypsum Company	L03896	Galena Park	11	12/30/08
Houston	American Diagnostic Tech LLC	L05514	Houston	53	01/02/09
Houston	Houston Medical Imaging	L05184	Houston	11	12/23/08
Houston	Baker Hughes Oilfield Operations Inc. dba Baker Atlas	L05104	Houston	13	01/08/09
Houston	Texas Childrens Hospital Diagnostic Imaging 2-2521	L04612	Houston	43	01/09/09
Kaufman	Presbyterian Hospital of Kaufman	L03337	Kaufman	17	12/31/08
Kosse	U. S. Silica Company	L03150	Kosse	12	01/09/09
Lubbock	Covenant Health System dba Joe Arrington Cancer Research and Treatment Center	L04881	Lubbock	46	01/09/09
Midland	Permian Cardiology Associates	L05716	Midland	06	01/08/09
North Richland Hills	Columbia North Hills Hospital Subsidiary L.P. dba North Hills Hospital	L02271	N. Richland Hills	57	12/23/08
Paris	Essent PRMCC LP dba Paris Regional Medical Center	L03199	Paris	46	01/14/09
Pasadena	Sunoco Inc. R & M dba Sunoco Chemicals	L02153	Pasadena	36	01/05/09
Pittsburg	Southwestern Electric Power Company Welsh Power Plant	L02008	Pittsburg	19	01/12/09

AMENDMENTS TO EXISTING LICENSES ISSUED (Continued):

Location	Name	License #	City	Amend-ment #	Date of Action
Port Arthur	Christus Health Southeast Texas dba Christus Hospital St. Mary	L01212	Port Arthur	96	01/05/09
San Angelo	Shannon Medical Center	L02174	San Angelo	59	01/09/09
San Antonio	Endocrinology Nuclear Medicine Assoc. P.A.	L03343	San Antonio	17	01/05/09
San Antonio	University of Texas at San Antonio Environmental Health Safety and Risk Mgmt.	L01962	San Antonio	60	12/29/08
San Antonio	San Antonio Nuclear Cardiovascular Svcs. Inc.	L05134	San Antonio	14	01/07/09
San Antonio	South Texas Radiology Imaging Centers	L03518	San Antonio	65	01/09/09
San Antonio	University of Texas Health Science Center at San Antonio Edinburg Regional Academic Health Ctr. Environmental Health and Safety	L06029	San Antonio	01	01/12/09
San Antonio	South Texas Radiology Imaging Centers	L03518	San Antonio	65	01/09/09
The Woodlands	St. Lukes The Woodlands Hospital	L05763	The Woodlands	18	12/30/08
Throughout Tx	Desert Industrial X-Ray L.P.	L04590	Abilene	92	01/12/09
Throughout Tx	Eagle NDT L.L.C.	L06176	Abilene	05	01/12/09
Throughout Tx	Texas Dept. of Transportation Construction Division, Materials and Pavements Section	L00197	Austin	143	12/31/08
Throughout Tx	Gulf Coast Weld Spec.	L05426	Beaumont	76	01/05/09
Throughout Tx	NDE Solutions L.L.C.	L05879	College Station	19	01/12/09
Throughout Tx	National Inspection Services L.L.C.	L05930	Crowley	20	01/12/09
Throughout Tx	Terracon Consultants Inc	L05268	Dallas	29	01/09/09
Throughout Tx	Irisndt Inc.	L04769	Deer Park	66	01/02/09
Throughout Tx	Irisndt Inc.	L04769	Deer Park	65	12/30/08
Throughout Tx	Lowther Consulting Inc.	L06042	Dublin	01	12/31/08
Throughout Tx	Encon International Inc.	L04528	El Paso	14	01/05/09
Throughout Tx	Gemclear L.P.	L06189	Farmers Branch	02	01/05/09
Throughout Tx	Waggoner and Associates Inc. dba Waggoner-Texas & Associates Inc.	L06159	Flint	05	12/23/08
Throughout Tx	H and H X-Ray Services Inc.	L02516	Flint	76	12/30/08
Throughout Tx	Gray Wireline Service Inc.	L03541	Fort Worth	31	01/05/09
Throughout Tx	Comprobe Incorporated	L01667	Fort Worth	31	01/05/09
Throughout Tx	Freese and Nichols Inc.	L04301	Fort Worth	17	01/14/09
Throughout Tx	Stearns Conrad and Schmidt Consulting Engineers Inc.	L06209	Houston	02	12/22/08
Throughout Tx	Cardinal Health	L01911	Houston	140	01/08/09
Throughout Tx	Aviles Engineering Corporation	L03016	Houston	24	01/09/09
Throughout Tx	Material Inspection Technology Inc.	L05672	Houston	29	01/12/09
Throughout Tx	ERM Remediation and Construction Management-Southwest L.L.C.	L05877	Houston	06	01/06/09
Throughout Tx	Perf-O-Log Inc.	L05478	Iowa Colony	21	01/05/09
Throughout Tx	City of Killeen	L04668	Killeen	08	01/05/09
Throughout Tx	Southern Services Inc. dba Southern Technical Services	L05270	Lake Jackson	51	01/08/09
Throughout Tx	Spectro Analytical Instruments Inc.	L02788	Marble Falls	47	01/05/09
Throughout Tx	American X-Ray and Inspection Services Inc. dba AXIS Inc.	L05974	Midland	16	12/31/08
Throughout Tx	Geoco Inc.	L05146	Midland	12	12/23/08
Throughout Tx	Northern Shared Medical Services Inc.	L06142	Nacogdoches	01	12/30/08
Throughout Tx	Black Warrior Wireline Corp.	L04473	Odessa	30	01/05/09
Throughout Tx	Big State X-Ray	L02693	Odessa	73	12/31/08
Throughout Tx	Nuliner Inc.	L06053	Odessa	01	12/29/08
Throughout Tx	Kellys Pipe Inspection Inc.	L05120	Odessa	04	01/08/09
Throughout Tx	Pasadena Refining System Inc.	L01344	Pasadena	31	01/05/09
Throughout Tx	Techcorr USA L.L.C.	L05972	Pasadena	57	12/30/08
Throughout Tx	Conam Inspection and Engineering Inc.	L05010	Pasadena	161	12/22/08

AMENDMENTS TO EXISTING LICENSES ISSUED (Continued):

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout Tx	Petrochem Inspection Services Inc.	L04460	Pasadena	94	12/22/08
Throughout Tx	Geotechnical Consultants Inc.	L04819	San Antonio	10	12/22/08
Throughout Tx	Weaver Services Inc. dba WSI Cased Hole Specialist	L01489	Snyder	33	12/31/08
Throughout Tx	GCT Inspection Inc.	L02378	South Houston	102	01/09/09
Throughout Tx	Schlumberger Technology Corporation	L01833	Sugarland	150	01/05/09
Waco	Baylor University	L00343	Waco	26	01/15/09

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	The Christus Stehlin Foundation	L04244	Houston	07	12/30/08

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Brainwaves Neuroimaging Clinic L.L.C.	L05767	Houston	3	12/23/08
Mission	Mission Hospital	L02802	Mission	38	12/31/08

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 - MC 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-200900285
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: January 23, 2009

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Texas Health and Human Services Commission

Notification of Consulting Procurement

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the release of its Request for Proposals for "Consulting Services to Provide a Study of Various Outreach and Informing Strategies" (RFP #529-09-0060). HHSC seeks to conduct court-ordered study of the reasons persons birth through age 20 enrolled in Medicaid miss checkups and the effectiveness of various strategies for outreach and informing (OI) through the procurement of consulting services in accordance with the specifications contained in this RFP.

In compliance with *Frew, et al. v. Hawkins, et al.*, Civil Action No. 3:93CV65, Consent Decree, dated February, 1996, and CAO, dated September 5, 2007, HHSC seeks to procure court-ordered study of the reasons that Class Members miss checkups and the effectiveness of various methods for OI.

The RFP is located in full on HHSC's Business Opportunities Page link at http://www.hhsc.state.tx.us/about_hhsc/BusOpp/BO_opportunities.html. HHSC also posted notice of the procurement on the Texas Marketplace on or about February 4, 2009.

The successful contractor will be expected to complete the court-ordered study in accordance with the directives of the Frew court for independent, unbiased, statistically valid, and timely assessments identified in the CAOs and to provide evidence based recommendations to HHSC for Medicaid improvements, corrective action, strategic action, rewards and/or sanctions based on the findings of the studies.

Health and Human Services Commission's Sole Point-of-Contact for Procurement

Elizabeth Ward

Texas Health and Human Services Commission

Enterprise Contract and Procurement Services

4405 North Lamar Boulevard

Austin, Texas 78756-3422

(512) 206-5416

elizabeth.ward@hhsc.state.tx.us

All questions regarding the RFP must be sent in writing to the above-referenced contact by 5:00 p.m. Central Time on February 20, 2009. HHSC will post all written questions received with HHSC's responses on its website on March 6, 2009, or as they become available. All proposals must be received at the above-referenced address on or before 3:00 p.m. Central Time on March 25, 2009. Proposals received after this time and date will not be considered.

HHSC will hold a Vendor Conference on February 18, 2009 at 1:00 p.m. in the Lone Star Conference Room at 11209 Metric Boulevard, Building H, Austin, Texas 78758.

All proposals will be subject to evaluation based on the criteria and procedures set forth in the RFP. HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other obligation to execute any contracts on the basis of this notice. HHSC will not pay for costs incurred by any entity in responding to this RFP.

TRD-200900305

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: January 26, 2009

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by ONECIS INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Downers Grove, Illinois.

Application for incorporation in the State of Texas by MOLINA HEALTHCARE OF TEXAS INSURANCE COMPANY, a domestic life company. The home office San Antonio, Texas.

Application for admission to the State of Texas by AXIS SPECIALTY INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Hartford, Connecticut.

Application to change the name of THE MEDICAL ASSURANCE COMPANY, INC., to PROASSURANCE INDEMNITY COMPANY, INC., a foreign fire and casualty company. The home office is in Birmingham, Alabama.

Application to change the name of CONNIE LEE INSURANCE COMPANY to EVERSPAN FINANCIAL GUARANTEE CORP., a foreign fire and casualty company. The home office is in Madison, Wisconsin.

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, M/C 305-2C, Austin, Texas 78701.

TRD-200900269

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: January 21, 2009

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Texas Department of Licensing and Regulation

Vacancies on Board of Boiler Rules

The Texas Department of Licensing and Regulation announces two vacancies on the Board of Boiler Rules established by Texas Health and Safety Code, Chapter 755. The pertinent rules may be found in 16 TAC §65.65. The purpose of the Board of Boiler Rules is to advise the Texas Commission of Licensing and Regulation in the adoption of definitions and rules relating to the safe construction, installation, inspection, operating limits, alteration, and repair of boilers and their appurtenances.

The Board is composed of nine members appointed by the presiding officer of the Commission, with the Commission's approval. The Board consists of three members representing persons who own or use boilers in this state; three members representing companies that insure boilers in this state; one member representing boiler manufacturers or installers; one member representing organizations that repair or alter boilers in this state; and one member representing a labor union. Members serve staggered six-year terms, with the terms of three members expiring January 31 of each odd-numbered year. This announcement is for the positions of a manufacturer or installer of boilers in this state, and a member representing a company that insures boilers in this state.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone (512) 475-4765, fax (512) 475-2874 or e-mail advisory.boards@license.state.tx.us. Applications may also be downloaded from the Department's website at: www.license.state.tx.us.

Applicants may be asked to appear for an interview; however, any required travel for an interview would be at the applicant's expense.

TRD-200900302

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: January 26, 2009

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Vacancies on Licensed Court Interpreter Advisory Board

The Texas Department of Licensing and Regulation announces four vacancies on the Licensed Court Interpreter Advisory Board established by Texas Government Code, Chapter 57. The purpose of the Licensed Court Interpreter Advisory Board is to advise the Texas Commission of Licensing and Regulation in adopting rules and designing a licensing examination.

The Board is composed of nine members appointed by the presiding officer of the Commission, with the Commission's approval. The Board consists of an active district, county, or statutory county court judge who has been a judge for at least the three years preceding the date of appointment; an active court administrator who has been a court administrator for at least the three years preceding the date of appointment; an active attorney who has been a practicing member of the state bar for at least the three years preceding the date of appointment; three active licensed court interpreters; and three public members who are residents of this state. Members serve staggered six-year terms with the terms of one third of the members expiring on February 1, of each odd numbered year. This announcement is for the following positions:

two active licensed court interpreters; and two public members who are residents of this state.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone (512) 475-4765, fax (512) 475-2874 or e-mail advisory.boards@license.state.tx.us. Applications may also be downloaded from the Department's web site at: www.license.state.tx.us.

Applicants may be asked to appear for an interview; however, any required travel for an interview would be at the applicant's expense.

TRD-200900303
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: January 26, 2009

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Vacancies on Towing and Storage Advisory Board

The Texas Department of Licensing and Regulation announces two vacancies on the Towing and Storage Advisory Board established by Texas Occupations Code, Chapter 2308. The purpose of the Towing and Storage Advisory Board is to advise the Texas Commission of Licensing and Regulation and the Department on technical matters relevant to the administration and enforcement of Chapter 2308, including examination content, licensing standards, and continuing education requirements.

The Board is composed of eight members appointed by the presiding officer of the Commission, with the Commission's approval. The board consists of the following members one representative of a towing company operating in a county with a population of less than one million; one representative of a towing company operating in a county with a population of one million or more; one owner of a vehicle storage facility located in a county with a population of less than one million; one owner of a vehicle storage facility located in a county with a population of one million or more; one parking facility owner; one law enforcement officer from a county with a population of less than one million; one law enforcement officer from a county with a population of one million or more; and one representative of property and casualty insurers who write automobile insurance in this state. Members serve terms of six years, with the terms of two or three members, as appropriate, expiring on February 1 of each odd-numbered year. This announcement is for the positions of a representative of property and casualty insurers who write automobile insurance in this state and one parking facility owner.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone (512) 475-4765, fax (512) 475-2874 or e-mail advisory.boards@license.state.tx.us. Applications may also be downloaded from the Department's website at: www.license.state.tx.us.

Applicants may be asked to appear for an interview; however, any required travel for an interview would be at the applicant's expense.

TRD-200900304
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: January 26, 2009

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Vacancy on Advisory Board on Barbering

The Texas Department of Licensing and Regulation announces a vacancy on the Advisory Board on Barbering established by Texas Occupations Code, Chapter 1601. The pertinent rules may be found in 16 TAC §82.65. The purpose of the Advisory Board on Barbering is to advise the Texas Commission of Licensing and Regulation and the Department on education and curricula for applicants; the content of examinations; proposed rules and standards on technical issues related to barbering; and other issues affecting barbering.

The Board is composed of five members appointed by the presiding officer of the Commission, with the Commission's approval. The Board consists of two members who are engaged in the practice of barbering as a Class A barber and do not hold a barbershop permit; two members who are barbershop owners and hold barbershop permits; and one member who holds a permit to conduct or operate a barber school. Members serve staggered six-year terms, with the terms of one or two members expiring on the same date each odd-numbered year.

This announcement is for one position of a Class A barber who does not hold a barbershop permit.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone (512) 463-6599, fax (512) 475-2874 or e-mail advisory.boards@license.state.tx.us. Applications may also be downloaded from the Department's website at: www.license.state.tx.us.

Applicants may be asked to appear for an interview; however, any required travel for an interview would be at the applicant's expense.

TRD-200900301
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: January 26, 2009

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Vacancy on Air Conditioning and Refrigeration Contractors Advisory Board

The Texas Department of Licensing and Regulation announces a vacancy on the Air Conditioning and Refrigeration Contractors Advisory Board established by Texas Occupations Code, Chapter 1302. The pertinent rules may be found in 16 TAC §75.65. The purpose of the Air Conditioning and Refrigeration Contractors Advisory Board is to advise the Texas Commission of Licensing and Regulation in adopting rules, administering and enforcing this chapter, and setting fees.

The Board is composed of six members appointed by the presiding officer of the Commission, with the Commission's approval. The Board consists of one official of a municipality with a population of more than 250,000; one official of a municipality with a population of not more than 250,000; and four full-time licensed air-conditioning and refrigeration contractors, as follows: one member who holds a Class A license and practices in a municipality with a population of more than 250,000; one member who holds a Class B license and practices in a municipality with a population of more than 250,000; one member who holds a Class A license and practices in a municipality with a population of more than 25,000 but not more than 250,000; and one member who holds a Class B license and practices in a municipality with a population of not more than 25,000. At least one appointed Board member must be an air conditioning and refrigeration contractor who employs organized labor and at least two appointed members must be air conditioning and refrigeration contractors who are licensed engineers. The executive director and the chief administrator of this chapter serve as ex officio, nonvoting members of the Board. Members serve staggered six-year terms. The terms of two appointed members expire on Febru-

ary 1 of each odd-numbered year. This announcement is for the position of a Class B license holder who practices in a municipality with a population of not more than 25,000.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone (512) 463-6599, fax (512) 475-2874 or e-mail advisory.boards@license.state.tx.us. Applications may also be downloaded from the Department's website at: www.license.state.tx.us.

Applicants may be asked to appear for an interview; however, any required travel for an interview would be at the applicant's expense.

TRD-200900300
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: January 26, 2009

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Vacancy on Architectural Barriers Advisory Committee

The Texas Department of Licensing and Regulation announces a vacancy on the Architectural Barriers Advisory Committee established by Texas Government Code, Chapter 469. The pertinent rules may be found in 16 TAC §68.65. The purpose of the Architectural Barriers Advisory Committee is to advise the Texas Commission of Licensing and Regulation in adopting rules.

The Committee is composed of at least eight members appointed by the presiding officer of the Commission, with the Commission's approval. The Committee consists of building professionals and persons with disabilities who are familiar with architectural barrier problems and solutions. Members serve at the will of the Commission. This announcement is for the position of a building professional.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone (512) 475-4765, fax (512) 475-2874 or e-mail advisory.boards@license.state.tx.us. Applications may also be downloaded from the Department's website at: www.license.state.tx.us.

Applicants may be asked to appear for an interview; however any required travel for an interview would be at the applicant's expense.

TRD-200900299
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: January 26, 2009

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Texas Lottery Commission

Instant Game Number 1153 "Weekly Grand"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1153 is "WEEKLY GRAND." The play style is "multiple games."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1153 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 1153.

A. Display Printing--That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint--The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol--The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, $2.00, $4.00, $5.00, $10.00, $40.00, $100, $300, GRAND SYMBOL, CLOVER SYMBOL, DIAMOND SYMBOL, GOLD BAR SYMBOL, POT OF GOLD SYMBOL, MONEY BAG SYMBOL, and TOP HAT SYMBOL.

D. Play Symbol Caption--the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1153 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$40.00	FORTY
$100	ONE HUND
$300	THR HUND
GRAND SYMBOL	WEEK
CLOVER SYMBOL	CLVR
DIAMOND SYMBOL	DIAMD
GOLD BAR SYMBOL	GOLD
POT OF GOLD SYMBOL	POTGLD
MONEY BAG SYMBOL	MBAG
TOP HAT SYMBOL	TPHAT

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 positioned beneath the bottom row of play data in the scratched-off play area. 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, $4.00, $5.00, $10.00, or $20.00.

G. Mid-Tier Prize--A prize of $40.00 or $300.

H. High-Tier Prize--A prize of $1,000/wk ($1,000 per week for 20 years).

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 (1153), 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: 1153-0000001-001.

K. Pack--A pack of "WEEKLY GRAND" 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. Please note the books will be in an A, B, C, and D configuration.

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 "WEEKLY GRAND" Instant Game No. 1153 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 "WEEKLY GRAND" Instant Game is determined once the latex on the ticket is scratched off to expose 15 (fifteen) play symbols. In Game 1, if YOUR NUMBER beats THEIR NUMBER in any one row across, the player will win the prize for that row. If the player reveals the GRAND symbol, the player will win $1,000 per week for 20 years. In Game 2, if the player reveals 3 matching prize amounts, the player will win that amount. If the player reveals 3 GRAND symbols, the player will win $1,000 per week for 20 years.

In Game 3, if the player matches 2 out of 3 play symbols, the player will win $20 instantly. 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 15 (fifteen) 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 15 (fifteen) 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 15 (fifteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 15 (fifteen) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. No three or more like non-winning prize symbols on a ticket.

B. Consecutive non-winning tickets will not have identical play data, spot for spot.

C. The $300 and GRAND prize symbols will appear on every ticket unless otherwise restricted.

D. The GRAND prize symbol may only be used in Games 1 and 2.

E. Non-winning prize symbols will not match a winning prize symbol on a ticket.

F. Game 1: No ties between YOUR NUMBER play symbols and THEIR NUMBER play symbols in a row.

G. Game 1: No duplicate rows on a ticket.

H. Game 1: No duplicate non-winning prize symbols on a ticket.

I. Game 2: No 4 or more of a kind.

J. Game 3: There will never be 3 matching symbols in this game.

2.3 Procedure for Claiming Prizes.

A. To claim a "WEEKLY GRAND" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, 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, in some cases, required to pay a $40.00 or $300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. When claiming a "WEEKLY GRAND" Instant Game prize of $1,000 per week for 20 years, the claimant must choose one of four (4) payment options for receiving his prize:

1. Weekly via wire transfer to the claimant/winner's account. This will be similar to the current "WEEKLY GRAND" (Game 1027 and Game 827) payment process. With this plan, a payment of $1,000.00 less Federal withholding will be made once a week for 20 years. After the initial payment, installment payments will be made every Wednesday.

2. Monthly via wire transfer to the claimant/winner's account. If the claim is made during the month, the claimant/winner will still receive

the entire month's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, a payment of $4,337.00 less Federal withholding will be made the month of the claim. Each additional month, a payment of $4,333.00 less Federal withholding will be made once a month for 20 years. After the initial payment, installment payments will be made on the first business day of each month.

3. Quarterly via wire transfer to the claimant/winner's account. If the claim is made during the quarter, the claimant/winner will still receive the entire quarter's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, a payment of $13,000.00 less Federal withholding will be made each quarter (four times a year) for 20 years. After the initial payment, installment payments will be made on the first business day of the first month of every quarter (January, April, July, October).

4. Annually via wire transfer to the claimant/winner's account. These payments will be made in a manner similar to how jackpot payments are currently handled. With this plan, a payment of $52,000.00 less Federal withholding will be made once a year during the anniversary month of the claim for 20 years. After the initial payment, installment payments will be made on the first business day of the anniversary month.

C. As an alternative method of claiming a "WEEKLY GRAND" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, or $300, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "WEEKLY GRAND" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "WEEKLY GRAND" 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 prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 33,600,000 tickets in the Instant Game No. 1153. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1153 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	4,569,600	7.35
$4	3,091,200	10.87
$5	201,600	166.67
$10	336,000	100.00
$20	201,600	166.67
$40	185,360	181.27
$300	10,640	3,157.89
$1,000/WK	4	8,400,000.00

*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 3.91. 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. 1153 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1153, 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-200900323
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: January 27, 2009

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Instant Game Number 1155 "Bonus Cashword"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1155 is "BONUS CASHWORD." The play style is "crossword."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1155 shall be $3.00 per ticket.

1.2 Definitions in Instant Game No. 1155.

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--One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, and blackened square.

D. Play Symbol Caption--the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol, and each 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. 1155 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	
Z	
	

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 positioned beneath the bottom row of play data in the scratched-off play area. 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 $3.00, $5.00, $10.00, or $20.00.

G. Mid-Tier Prize--A prize of $100 or $500.

H. High-Tier Prize--A prize of $5,000 or $35,000.

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 (1155), 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: 1155-0000001-001.

K. Pack--A pack of "BONUS CASHWORD" Instant Game tickets contain 125 tickets, which are packed in plastic shrink-wrapping and fan-folded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 125 will be revealed on the back of the pack. Every other book will reverse i.e., reverse order will be: the back of ticket 001 will be shown on the front of the pack and the front of ticket 125 will be shown on the back of the pack. 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 "BONUS CASHWORD" Instant Game No. 1155 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BONUS CASHWORD" Instant Game is determined once the latex on the ticket is scratched off to expose 141 (one hundred forty-one) possible play symbols. The player must scratch off the YOUR LETTERS and BONUS play areas. The player must use the YOUR LETTERS and the BONUS LETTERS to form words in the BONUS CASHWORD puzzle and the player wins the amount shown in the PRIZE LEGEND. There will be only one prize per ticket. Letters combined to form a complete "word" must be revealed in an unbroken horizontal (left to right) sequence or vertical (top to bottom) sequence of letters within the BONUS CASHWORD puzzle. Only letters within the BONUS CASHWORD puzzle grid that are matched with the YOUR LETTERS and BONUS LETTERS can be used to form a complete "word." In the BONUS CASHWORD puzzle, every lettered square within an unbroken horizontal or vertical sequence must be matched with the YOUR LETTERS or BONUS LETTERS to be considered a complete "word." Words within a word are not eligible for a prize. For example, all the YOUR LETTERS play symbols "S, T, O, N, E" must be revealed for this to count as one complete "word." TON, ONE or any other portion of the sequence of STONE would not count as a complete "word." A complete "word" must contain at least three letters. 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. One hundred forty-one (141) possible 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, 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;

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 141 (one hundred forty-one) possible 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 141 (one hundred forty-one) possible Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 141 (one hundred forty-one) possible Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. Each grid will contain exactly the same amount of letters.

C. Each grid will contain exactly the same amount of words.

D. No duplicate words on a ticket.

E. All words used will be from the TEXAS APPROVED WORD LIST CASHWORD/CROSSWORD v.1.0.

F. All words will contain a minimum of 3 letters.

G. All words will contain a maximum of 9 letters.

H. The CALLER AREA is defined as the combined YOUR LETTERS and BONUS area.

I. No duplicate play symbols in the CALLER AREA.

J. There will be a minimum of 3 vowels (A, E, I, O, and U) in the CALLER AREA.

K. A minimum of 15 play symbols in the CALLER AREA will match at least one letter in the crossword grid.

L. At least one play symbol in the BONUS area will match to at least one letter in the crossword grid.

M. The presence or absence of any letter or combination of letters in the CALLER AREA will not be indicative of a winning or non-winning ticket.

N. No consonant play symbol will appear more than 9 times in the crossword grid, and no vowel will appear more than 14 times in the crossword grid.

O. Words from the TEXAS REJECTED WORD LIST v.2.0 will not appear horizontally in the YOUR LETTERS area.

P. On winning tickets, at least 1 play symbol in the BONUS area will match at least one letter in a completed word.

Q. On non-winning tickets, each crossword grid will have at least 2 completed words.

R. Each non-winning ticket will have at least 5 near wins (word with all but one letter matched).

2.3 Procedure for Claiming Prizes.

A. To claim a "BONUS CASHWORD" Instant Game prize of $3.00, $5.00, $10.00, $20.00, $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 $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 2.3.C of these Game Procedures.

B. To claim a "BONUS CASHWORD" Instant Game prize of $5,000 or $35,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BONUS CASHWORD" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "BONUS CASHWORD" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "BONUS CASHWORD" 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 prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, 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 therefor, 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 therefor. 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 30,000,000 tickets in the Instant Game No. 1155. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1155 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$3	3,360,000	8.93
$5	4,320,000	6.94
$10	600,000	50.00
$20	360,000	83.33
$100	61,500	487.80
$500	12,500	2,400.00
$5,000	75	400,000.00
$35,000	50	600,000.00

*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 3.44. 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.

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. 1155 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1155, 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-200900324
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: January 27, 2009

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Panhandle Regional Planning Commission

Legal Notice

The Panhandle Regional Planning Commission (PRPC) seeks a vendor or vendors that can supply pre-paid fuel cards usable for the purchase of fuel by workforce development program customers at outlets in the Panhandle Workforce Development Area.

Cards must be available pre-loaded in various denominations directly from the vendor and limited to fuel purchases only.

PRPC makes no guarantees of purchases from the selected vendor(s) and reserves the right to use alternative methods to purchase fuel.

Interested vendors may obtain a copy of the solicitation packet by contacting Tony White, at (806) 372-3381, (800) 477-4562 or twhite@theprpc.org. The packet may also be picked up at PRPC's offices located at 415 West Eighth, Amarillo, Texas. The required information should be submitted to PRPC no later than February 11, 2009.

TRD-200900312
Anthony White
Workforce Development Assistant Director
Panhandle Regional Planning Commission
Filed: January 26, 2009

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Public Utility Commission of Texas

Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on January 7, 2009, with the Public Utility Commission of Texas for an amendment to a certificated service area boundary.

Docket Style and Number: Application of Central Telephone Company of Texas d/b/a Embarq for an Amendment to a Certificate of Convenience and Necessity to Amend the Service Area Boundary between the Rockdale Exchange of AT&T and Milano Exchange of Central Telephone. Docket Number 36567.

The Application: The minor boundary amendment is being filed to realign the boundary between the Milano exchange of Embarq and the Rockdale exchange of AT&T Texas. The amendment will transfer a portion of AT&T Texas' serving area in the Rockdale exchange to Em-

barq's Milano exchange. AT&T Texas has provided a letter of concurrence endorsing this proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by February 13, 2009, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 36567.

TRD-200900291
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 23, 2009

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Notice of Application for Designation as a Resale Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on January 23, 2009, for designation as a resale eligible telecommunications provider (R-ETP).

Docket Title and Number: Application of PNG Telecommunications, Inc. d/b/a PowerNet Global Communications for Designation as a Resale Eligible Telecommunications Provider. Docket Number 36636.

The Application: The company is requesting R-ETP designation to be eligible to receive state universal service funding to assist it in providing universal service in Texas. Pursuant to P.U.C. Substantive Rule §26.419, the commission designates qualifying common carriers as R-ETPs for service areas set forth by the commission. PNG Telecommunications, Inc. d/b/a PowerNet Global Communications seeks R-ETP designation in the service area of Texas currently served by Southwestern Bell Telephone Company d/b/a AT&T Texas. The Company holds Service Provider Certificate of Operating Authority No. 60387.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by February 26, 2009. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll free number 1-888-782-8477. All comments should reference Docket Number 36636.

TRD-200900333
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 27, 2009

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Notice of Application for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on January 22, 2009, for designation as an eligible telecommunications carrier (ETC) and eligible telecommunications provider (ETP) pursuant to P.U.C. Substantive Rule §26.418 and §26.417, respectively.

Docket Title and Number: Application of Pathwayz Communications, Inc. for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider. Docket Number 36632.

The Application: The company is requesting ETC/ETP designation in order to be eligible to receive federal and state universal service funding to assist it in providing universal service in Texas. Pursuant to 47 U.S.C. §214(e) and P.U.C. Substantive Rule §26.417, the commission, either upon its own motion or upon request, designates qualifying common carriers as ETCs and ETPs for service areas set forth by the commission. Pathwayz Communications, Inc. seeks ETC/ETP designation in three specific, non-rural exchanges of Southwestern Bell Telephone Company d/b/a AT&T Texas identified in Exhibit 1 of its application. Pathwayz Communications, Inc. holds Service Provider Certificate of Operating Authority No. 60344.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by February 26, 2009. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas 1-800-735-2989 to reach the commission's toll free number 1-888-782-8477. All comments should reference Docket Number 36632.

TRD-200900310
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 26, 2009

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Notice of Application for Retail Electric Provider Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on January 20, 2009, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Infinite Energy, Inc. for REP Certification, Docket Number 36609 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 13, 2009. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36609.

TRD-200900290
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 23, 2009

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on January 20, 2009, for a ser-

vice provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of TechMaxx, LLC for a Service Provider Certificate of Operating Authority, Docket Number 36614 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, HDSL, SDSL, RADSL, VDSL, Optical Services, T1-Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, long distance, and wireless services.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 11, 2009. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36614.

TRD-200900289
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 23, 2009

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Notice of Application for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on January 20, 2009, for waiver of denial by the Pooling Administrator (PA) of Southwestern Bell Telephone Company d/b/a AT&T Texas' (AT&T Texas) request for assignment of one thousand-block of numbers in the 817 NPA in the Roanoke rate center.

Docket Title and Number: Petition of Southwestern Bell Telephone Company d/b/a AT&T Texas for Waiver of Denial of Numbering Resources, Docket Number 36617.

The Application: AT&T Texas submitted an application to the PA for the requested blocks in accordance with the current guidelines. The PA denied the request because AT&T Texas did not meet the months-to-exhaust and utilization criteria established by the Federal Communications Commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 11, 2009. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36617.

TRD-200900288
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 23, 2009

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Notice of Intent to Implement Minor Rate Changes Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of Industry Telephone Company (Industry Telephone) application filed with the Public Utility Commission of Texas (commission) on January 16, 2009, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Industry Telephone Company Statement of Intent to Implement Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171; Tariff Control Number 36606.

The Application: Industry Telephone filed an application to increase residential and business access line rates by 10%. The proposed effective date for the proposed rate changes is May 1, 2009. The estimated annual revenue increase recognized by Industry Telephone is $24,434.00 or less than 5% of Industry Telephone's gross annual intrastate revenues. Industry Telephone has 2,190 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by the lesser of 5% or 1,500 of the affected local service customers to which this application applies by March 30, 2009, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by March 30, 2009. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 36606.

TRD-200900309
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 26, 2009

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Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Paris, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Cox Field during the course of the next five years through multiple grants.

Current Project: City of Paris. TxDOT CSJ No.: 0901PARIS. Scope: Provide engineering/design services to overlay and mark runway 17-35, rehabilitate PCC fuel pad and replace sign panels, and relocate/install MIRL RW 17-35.

The DBE/HUB goal for the current project is 4%. TxDOT Project Manager is Alan Schmidt.

Future scope work items for engineering/design services within the next five years may include but are not necessarily limited to the following:

1. Crack seal RWs, TWs, & apron

2. Reconstruct/repair TW

3. Repair pavement near Hangar D

4. Overlay & mark parallel TW A

5. Widen TW to RW 17

6. Replace VASI w/PAPI-4 RW 35

7. Install REIL RW 17-35

8. Install PAPI-4 RW 17

9. RSA improvements RW 17

10. Construct hangar

The City of Paris reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, project narrative, and most recent Airport Layout Plan are available online at

www.txdot.gov/avn/avninfo/notice/consult/index.htm

by selecting "Cox Field." The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 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/business/projects/aviation.htm.

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Six completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than March 3, 2009 at 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 Delia Lopez Molina.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation of engineering proposals can be found at

http://www.txdot.gov/business/projects/aviation.htm.

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Delia Lopez Molina, Grant Manager. For technical questions, please contact Alan Schmidt, Project Manager.

TRD-200900345
Jack Ingram
Associate General Counsel
Texas Department of Transportation
Filed: January 28, 2009

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Notice of Availability FEIS (Grand Parkway Segment G, Harris County, Texas)

Pursuant to Title 43, Texas Administrative Code, §2.5(e)(8)(B), the Texas Department of Transportation (department) is advising the public of the availability of the Final Environmental Impact Statement (FEIS) for the proposed construction of State Highway 99, IH 45 to US 59 (Grand Parkway Segment G) north of Houston in Harris and Montgomery Counties, Texas. Comments regarding the FEIS may be submitted via email to:

segmentgcomments@grandpky.com

or via first-class mail to The Grand Parkway Association, Attention: Segment G Comments, 4544 Post Oak Place, Suite 222, Houston, Texas 77027 or the Director of Project Development at the Texas Department of Transportation's Houston District Office, 7600 Washington Avenue, Houston, Texas 77251 or P.O. Box 1386, Houston, Texas 77251-1386. Comments are due by 5:00 p.m. on March 16, 2009.

The purpose of the proposed action is to provide improved access to the existing and future thoroughfare system, reduce area traffic congestion, improve safety, and improve area-wide mobility. A full range of alternatives were identified and evaluated for Segment G at the corridor level (five corridors), transportation mode level (No Build, Transportation System Management Alternatives, Travel Demand Alternatives, and Modal Alternatives), and at the alignment level. The proposed action consists of the construction of a controlled access tollway from IH 45 to US 59 in Harris and Montgomery Counties, a distance ranging from 13.6 to 14.4 miles, depending on the alternative alignment considered. The proposed facility will consist of a four-mainlane controlled access tollway within a 400-foot right-of-way (ROW) width. A total of four build alternative alignments, in addition to the No-Build alternative, have been presented in the FEIS. All four build alternative alignments lie between IH 45 and US 59 in a west-east direction. Alternative Alignment A begins at IH 45 approximately 2.9 miles north of FM 2920 and is approximately 13.7 miles in length. Alternative Alignment A travels east approximately 2.5 miles, crossing the Hardy Toll Road and Spring Creek, before shifting to a northeasterly direction approximately 2.6 miles, paralleling Riley Fuzzel Road. Alternative Alignment A veers southeast 1.0 mile before traversing east approximately 2.0 miles, crossing the San Jacinto River. Alternative Alignment A heads to a northeasterly direction approximately 1.1 miles before veering east approximately 3.5 miles, crossing FM 1314 and White Oak Creek. Alternative Alignment A continues southeast approximately 1.0 mile before terminating at US 59. Alternative Alignment B begins at IH 45 approximately 0.2 miles south of IH 45 and the Hardy Toll Road interchange and is approximately 13.6 miles in length. Alternative Alignment B travels southeast along the Hardy Toll Road approximately 1.2 miles before shifting to an easterly direction approximately 1.3 miles, crossing Spring Creek. Alternative Alignment B tra-

verses northeast with Alternative Alignment A for approximately 2.3 miles, paralleling Riley Fuzzel Road. Alternative Alignment B continues northeast approximately 1.4 miles before veering east approximately 3.6 miles, crossing the San Jacinto River. Alternative Alignment B then turns southeast approximately 0.5 mile, paralleling FM 1314. Alternative Alignment B proceeds east approximately 3.3 miles, crossing White Oak Creek and then terminating at US 59. Alternative Alignment C begins at IH 45 approximately 2.9 miles north of FM 2920 and is approximately 13.7 miles in length. Alternative Alignment C traverses east with Alternative Alignment A approximately 2.5 miles, crossing the Hardy Toll Road and Spring Creek. Shifting to a northeasterly direction approximately 2.6 miles, Alternative Alignment C parallels Riley Fuzzel Road and then heads in an easterly direction approximately 4.5 miles, crossing the San Jacinto River. Alternative Alignment C veers to the northeast approximately 1.0 mile, crossing FM 1314, before joining Alternative Alignment A in an easterly direction for approximately 1.3 miles. Alternative Alignment C traverses to the southeast approximately 0.8 mile before continuing east with Alternative Alignment B approximately 1.0 mile, crossing White Oak Creek and terminating at US 59. Alternative Alignment D begins at IH 45 approximately 2.9 miles north of FM 2920 and is approximately 14.4 miles in length. Alternative Alignment D travels east with Alternative Alignment A and Alternative Alignment C approximately 2.5 miles, crossing the Hardy Toll Road and Spring Creek. Shifting to a northeasterly direction approximately 2.6 miles, Alternative Alignment D parallels Riley Fuzzel Road and traverses approximately 2.4 miles in a northeasterly direction, crossing the San Jacinto River. Alternative Alignment D veers to the southeast approximately 2.1 miles and continues easterly 3.0 miles, crossing FM 1314. Alternative Alignment D traverses to the southeast approximately 0.8 miles before continuing east with Alternative Alignment B approximately 1.0 mile, crossing White Oak Creek and terminating at US 59.

The preferred corridor and transportation mode and the recommended alternative alignment as presented in the Draft Environmental Impact Statement (DEIS) were selected after careful consideration and assessment of the potential environmental impacts and evaluation of agency and public comments. After consideration of all agency and public comments received on the DEIS of 2007, coordination with landowners, as well as updated environmental data, the Grand Parkway Association (GPA), in coordination with the department and Federal Highway Administration (FHWA), selected a Preferred Alternative Alignment. It was determined that a slight shift in one area near a newly developed subdivision, Creekside Village, was necessary to avoid residential impacts. Other than the slight shift at Creekside Village, the Preferred Alternative Alignment is the Recommended Alternative Alignment as presented in the DEIS.

The preferred build alternative that has emerged from the study was proposed on the basis of its ability to best facilitate the project's Need and Purpose while minimizing impacts to the natural, physical, and social environments. The Preferred Build Alternative Alignment is approximately 13.7 miles long. It begins at IH 45 approximately 2.9 miles north of FM 2920. It travels east for approximately 1.7 miles, crossing the Hardy Toll Road and Spring Creek. The Preferred Alternative Alignment turns to the northeast, paralleling Riley Fuzzel Road, and continuing in this direction for approximately 5.5 miles. After crossing the West Fork of the San Jacinto River, the Preferred Alternative Alignment turns to the southeast for approximately 1.5 miles. The alignment turns slightly to head easterly for approximately 3.1 miles, passing between the Cumberland and Winchester Place subdivisions and crossing FM 1314. After passing the Timberland Estates subdivision, the Preferred Alternative Alignment turns back toward the southeast for approximately 1.9 miles until its terminus at US 59. The preferred alternative alignment for Segment G would require the acquisition of new ROW (746 acres), the adjustment of utility lines, and the filling of aquatic resources including jurisdictional wetlands (64.4 acres). The Preferred Alternative Alignment as presented in the FEIS would displace 110 residential properties and one commercial property. No archeological sites or historic properties are expected to be affected.

Copies of the FEIS may be viewed at the Grand Parkway Association website, www.grandpky.com; at the offices of the GPA or the department's Houston District (addresses previously mentioned); at the Houston Public Library, Central Branch, 500 McKinney, Houston, Texas; at the Harris County Public Library, Kingwood Branch, 4102 Rustic Woods Drive, Kingwood, Texas; at the Harris County Public Library, Baldwin Boettcher Branch, 22248 Aldine Westfield Road, Humble, Texas; at the Montgomery County Public Library, R.B. Tullis Branch, 21569 US Highway 59, New Caney, Texas; and at the Montgomery County Public Library, South Regional Branch, 2101 Lake Robbins Drive, The Woodlands, Texas. Requests for hard copies of the FEIS and other information about the project may be obtained at the GPA office or through the department's Public Information Office. For further information, please contact David Gornet, P.E. at (713) 965-0871 or Pat Henry, P.E. at (713) 802-5241.

TRD-200900329
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: January 27, 2009

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Public Hearing Notice - Statewide Transportation Improvement Program

The Texas Department of Transportation (department) will hold a public hearing on Tuesday, February 17, 2009, at 10:00 a.m. at the Texas Department of Transportation, 200 East Riverside Drive, Room 1A-2, Austin, Texas to receive public comments on the January Out of Cycle 2009 Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2008-2011. The STIP reflects the federally funded transportation projects in the FY 2008-2011 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 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(j) requires an MPO to develop its TIP in cooperation with the state and affected transportation operators, to provide an opportunity for interested parties to participate in the development of the program, and further requires the TIP to be updated at least once every four years and approved by the MPO and the Governor or Governor's designee. Section 135(g) 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.

In accordance with 43 TAC §15.8(d), a copy of the proposed January Out of Cycle 2009 Revisions to the FY 2008 - 2011 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, and on the department's website at:

www.txdot.gov

Persons wishing to review the January Out of Cycle 2009 Revisions to the FY 2008-2011 STIP may do so online or contact the Transportation Planning and Programming Division at (512) 486-5033.

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 13, 2009, 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 restrict 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 Government and Public Affairs Division, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-9957. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Further information on the FY 2008-2011 STIP may be obtained from Lori Morel, Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas 78704, (512) 486-5033. Interested parties who are unable to attend the hearing may submit comments to James L. Randall, P.E., Director, Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas 78704. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by Monday, March 23, 2009, at 4:00 p.m.

TRD-200900331
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: January 27, 2009

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Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 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:

http://www.txdot.gov/public_involvement/hearings_meetings/schedule.htm.

Or visit www.txdot.gov, click on Public Involvement, click on Hearings and Meetings, and then click on Aviation.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PILOT.

TRD-200900330
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: January 27, 2009

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Request for Proposal - Outside Counsel

The Texas Department of Transportation (department) requests proposals from law firms interested in representing the department in tax law matters. This request for proposals (RFP) is issued for the purpose of identifying qualified law firms able to provide legal representation required by the department and the Texas Transportation Commission (commission) on legal matters affecting the department, and as more fully set out below. Selection of outside counsel will be made by the department's General Counsel. The Office of the Attorney General must approve the General Counsel's selection before outside counsel may be employed.

Description: The department is a state agency with primary responsibility for planning, designing, constructing, operating, and maintaining the state's transportation system. The department has the responsibility for the development of tolled and nontolled highways, rail facilities, utility facilities, waterways, and certain aviation facilities. In particular, the development of toll projects and rail facilities through comprehensive development agreements and other public/private partnerships has become a primary focus of the department. The department must deal with taxation issues affecting these responsibilities and the innovative financing structures used in these projects. The primary tax issue relates to the tax consequences to both parties of business relationships between the department and public and private entities, including the federal income tax consequences of the business relationship and financing structure and state sales and property tax consequences, but also includes other tax and related ramifications relating to various modes of transportation, taxes and fees that affect transportation facilities and the customers of these facilities, and general tax matters related to the department's responsibilities as set out above. The department intends to engage outside counsel to represent the agency in these matters. Accordingly, the department invites responses to this RFP from firms that are qualified to perform these legal services. Outside counsel must have considerable prior experience with, as well as extensive knowledge of, these subjects.

Responses: Responses to the RFP may be submitted by an individual law firm, attorney, or joint venture between two or more law firms and/or attorneys. Responses to the RFP should include at least the following information: (1) a description of the firm's qualifications for performing legal work in the matters described previously, the names, experience, education, and expertise of the attorneys who will be assigned to work on such matters, the availability of the lead attorney and other firm personnel who will be assigned to work on these matters, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of these legal services; (2) information relative to the capabilities, locations, and resources of the firm's offices that might serve the department's requirements, including a summary of physical resources that would be assigned to the department, and an organizational chart indicating the relevant areas of responsibility of each attorney assigned to work on these matters; (3) the submission of fee information (either in the form of hourly rates for each attorney and paralegal who will be assigned to perform services in relation to these matters or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (4) an abstract of the firm's cost control procedures and how it charges for its services; (5) a comprehensive description of the procedures used by the firm to supervise the

provision of legal services in a timely and cost effective manner; (6) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the Texas Department of Transportation, or to the State of Texas or any of its boards, agencies, commissions, universities, or elected or appointed officials); and (7) confirmation of willingness to comply with the rules, policies, directives, and guidelines of the department, the commission, and the Attorney General of the State of Texas.

Note: The department is particularly concerned with issues pertaining to any conflict of interest. Respondents are admonished to make all practicable efforts to fully investigate, disclose, and address such conflicts.

A copy of the standard outside counsel contract is available upon request. Certain terms of the contract may be negotiated by the parties, subject to approval by the Office of the Attorney General.

Format and Person to Contact: Two copies of the proposal are requested. The proposal should be typed, preferably double spaced, on 8 1/2 by 11 inch paper with all pages sequentially numbered, and either stapled or bound together. It should be sent by mail or delivered in person, marked "Response to Request for Proposal" and addressed to Bob Jackson, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. For questions, contact Angie Parker, Associate General Counsel, at (512) 463-8630.

Deadline for Submission of Response: All proposals must be received by the Texas Department of Transportation at the previously stated address no later than 5:00 p.m. on March 9, 2009.

TRD-200900344
Jack Ingram
Associate General Counsel
Texas Department of Transportation
Filed: January 28, 2009

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University of North Texas

Public Notice - Award of Major Consulting Contract

Description of Activities Consultant Will Conduct:

The selected consulting firm is responsible for assisting the University of North Texas (UNT) with the assessment of, and to advise on, public and private-sector funding sources for research and demonstration activities; to assist and advise on development, presentation and negotiation of grants, contracts and other agreements; to assist and advise on the design and execution of a government affairs and external relations plan for UNT; and to assist with the assessment of, and to advise on, funding for the UNT Fundraising Campaign.

Name and Business Address of Consultant:

Strategic Partnership, LLC

1729 King Street, Suite 100

Alexandria, VA 22314-2720

Total Value and Beginning and Ending Dates of Contract:

Value: $ 300,000.00

Beginning Date: November 7, 2008

Ending Date: Shall remain in effect until the completion, approval, and acceptance of all services; and the delivery of final payment to Strategic Partnership, LLC

Dates on Which Documents, Films, Recordings, or Reports that Consultant is Required to Present are Due:

Date: Various dates - Monthly reports and any updates as needed by UNT

TRD-200900313
Carrie Stoeckert
Assistant Director of Purchasing and Payment Services
University of North Texas
Filed: January 27, 2009

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

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

Secretary of State - opinions based on the election laws.

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

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

Proposed Rules - sections proposed for adoption.

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

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

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

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

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

Review of Agency Rules - notices of state agency rules review.

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

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 33 (2008) is cited
as follows: 33 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 "33 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 33 TexReg 3."

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

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (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 ***Table of TAC Titles Affected***. The table 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 one or more ***Texas Register*** page numbers, as shown in the following example.

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

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