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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 391. PURCHASE OF GOODS AND SERVICES BY THE TEXAS HEALTH AND HUMAN SERVICES COMMISSION

SUBCHAPTER B. CONTRACTS

1 TAC §391.213, §391.215

The Texas Health and Human Services Commission (HHSC) proposes new §391.213, concerning Contract Monitoring Roles and Responsibilities, and §391.215, concerning Enhanced Contract Monitoring in Title 1, Part 15, Chapter 391, Subchapter B of the Texas Administrative Code.

BACKGROUND AND PURPOSE

Government Code Chapter 2261, which applies to state contracting standards and oversight, requires each state agency to adopt rules that address contract monitoring responsibilities and enhanced contract monitoring. Specifically, §2261.202 requires a state agency that procures goods or services on its own, independent of the comptroller and not under Education Code §51.9335 or §73.115 or under Government Code §2155.131 or §2155.132, to establish and adopt by rule a policy that clearly defines the contract monitoring roles and responsibilities, if any, of internal audit staff and other inspection, investigative, or audit staff.

Section 2261.253(c) requires that each state agency, by rule, shall establish a procedure to identify each contract for goods or services from a private vendor that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing officer. Section 2261.253(c) also requires that the agency's contract management office or procurement director immediately notify the agency's governing officer of any serious issue or risk that is identified with respect to a contract that requires enhanced contract monitoring.

SECTION-BY-SECTION SUMMARY

Proposed new §391.213, relating to contract monitoring roles and responsibilities, clarifies the staff and program areas within HHSC involved in the various aspects of contract monitoring.

Proposed new §391.215, relating to enhanced contract monitoring, clarifies the factors that determine which contracts require enhanced monitoring; provides direction for procedures and notification of serious issues or risk that is identified with respect to a monitored contract; and states the exceptions for specific contract types that do not require enhanced monitoring.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the new rules are in effect, there is no anticipated impact to costs and revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the sections will be in effect:

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not affect the number of employee positions;

(3) implementation of the proposed rules will not require an increase or decrease in future legislative appropriations;

(4) the proposed rules will not affect fees paid to the agency;

(5) the proposed rules will create new rules that Government Code §2261.202 and §2261.253(c) require HHSC to adopt;

(6) the proposed rules will not expand, limit, or repeal an existing rule;

(7) the proposed rules will not change the number of individuals subject to the rules; and

(8) the proposed rules will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that the proposed rules will not have an adverse economic effect on small and micro-businesses or rural communities. Consequently, an economic impact statement and regulatory flexibility analysis, pursuant to Government Code §2006.002, are not required.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

HHSC has determined that the proposed rules do not impose a cost on regulated persons, including another state agency, a special district, or a local government. Accordingly, Government Code §2001.0045 does not apply to these rules.

PUBLIC BENEFIT

Katherine Molina, Associate Commissioner of the Office of Compliance and Quality Control, has determined that for each year of the first five years the rules are in effect, the public will benefit from clarifying the contract monitoring process in rules that is required by statute.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions concerning the proposed rules may be directed to Katherine Molina at (512) 406-2451.

Written comments on the proposed rules may be submitted to Katherine Molina, Associate Commissioner of Compliance and Quality Control, Procurement and Contracting Services, Texas Health and Human Services Commission, 1100 W. 49th Street, Mail Code 2020, Austin, Texas 78756; or e-mailed to Katherine.Molina@hhsc.state.tx.us.

Comments must be received no later than 30 days from the date of publication of the proposed rules in the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed by midnight on the last day of the comment period. When e-mailing comments, please indicate "Comments on Proposed Rule 19R003" in the subject line.

STATUTORY AUTHORITY

The new rules are proposed under Government Code §531.0055(e) and §531.033, which provide the Executive Commissioner of HHSC with rulemaking authority, and under Government Code §2261.202 and §2261.253(c), which require state agencies to adopt rules clearly defining contract monitoring roles and responsibilities and enhanced contract monitoring.

The new rules affect Government Code §§531.00553, 2261.202, and 2261.253.

§391.213. Contract Monitoring Roles and Responsibilities.

The contract monitoring roles and responsibilities of the Texas Health and Human Services Commission (HHSC) internal audit staff and other inspection, investigative, or compliance staff are as follows:

(1) The Internal Audit Division will perform internal audit activities, which will include assisting and consulting regarding contract monitoring issues, based on the results of a risk assessment or upon request for consulting services. The Internal Audit Division will also perform audits of the contract management function and systems when audits are warranted by the results of risk assessment or included in the audit plan approved by HHSC's Executive Commissioner pursuant to Government Code §2102.005 and §2102.008.

(2) The Procurement and Contracting Services Division will seek to improve contract compliance by maintaining a system of record serving as a central repository for agency contracts so the agency can perform management, reporting, and contract compliance reviews.

(3) HHSC does not have a criminal enforcement unit. HHSC reports criminal activity related to agency contracts to the appropriate authorities as set out in statute.

(4) The contract manager/project manager that oversees a contract will monitor and report to other appropriate agency divisions regarding contract compliance.

(5) HHSC's Historically Underutilized Business Program will assist the administering division or divisions and contract management staff in monitoring agency contracts in connection with applicable historically underutilized and minority business contract requirements.

(6) HHSC's Compliance and Quality Control Division will continually review procurement policies and procedures, templates and forms, manuals and large solicitation documents to ensure compliance with state law and the State of Texas Procurement and Contract Management Guide.

§391.215. Enhanced Contract Monitoring.

(a) HHSC shall identify contracts that require enhanced monitoring.

(b) In determining which contracts require enhanced monitoring, HHSC shall consider factors including:

(1) contract amount;

(2) risk;

(3) special circumstances of the project; and

(4) the scope of the goods or services provided.

(c) HHSC shall adopt procedures to administer the enhanced contract monitoring program.

(d) Information on contracts that require enhanced monitoring will be reported to the HHSC Executive Commissioner at least quarterly. The Executive Commissioner will be notified immediately of any serious issues or risks that is identified with respect to such a contract.

(e) This section does not apply to a memorandum of understanding, interagency contract, interlocal agreement, or contract for which there is not a cost.

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

Filed with the Office of the Secretary of State on October 29, 2018.

TRD-201804696
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: December 9, 2018
For further information, please call: (512) 406-2451

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TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 3. STATE PUBLICATIONS DEPOSITORY PROGRAM

13 TAC §§3.1 - 3.3

The Texas State Library and Archives Commission (Commission) proposes amendments to 13 TAC §§3.1 - 3.3.

The proposed amendments to the rules provide for the increasing prevalence of information in electronic format, including:

--Revised definitions in §3.1 relating to materials in electronic format, including provision for born-digital materials.

--Revisions to simplify terminology and references in §3.2.

--Revisions to §3.3 from "Standard Deposit and Reporting Requirements for State Publications in Physical Formats" to "Standard Deposit and Reporting Requirements for State Publications in All Formats."

--Revised submission rules for State Publications in Physical Formats by removing certain outdated hardware as acceptable submission formats.

--Include in §3.3 rules on web harvesting through the Texas Records and Information Locator.

--Provision for the transmittal of electronic archival records to the Texas Digital Archive, a permanent repository of archival state reports and publications in §3.3 rule.

--Because these changes would incorporate changes currently included in §3.4, the agency proposes repeal of this section as no longer necessary. This action will be included in the *Texas Register* as a separate submission.

Elsewhere in this issue of the *Texas Register,* the Commission contemporaneously filed a notice of intent to review the rules at 13 TAC §§3.1 - 3.8, State Publications Depository Program, in its entirety. The current language in rules §§3.5 - 3.8 has been reviewed and there are no proposed revisions.

FISCAL NOTE. Mark Smith, State Librarian and Director for the Commission, has determined that for the first five-year period these amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments. As these rules pertain only to state records, there is no effect on local economies for the first five years that the proposed amendments are in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022. Similarly, the proposed amendments do not impose a cost on regulated persons and, therefore, are not subject to Texas Government Code, §2001.0045.

PUBLIC BENEFIT/COST NOTE. Mr. Smith has also determined that for each year of the first five-year period the amendments are in effect the public benefit anticipated will be streamlining and clarifying the rules relating to the standard deposit and reporting requirements for all state publications. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES. There is no direct adverse economic impact for small businesses, micro-businesses, and rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT. Staff prepared a Government Growth Impact Statement for this proposed rulemaking, as specified in Texas Government Code §2001.0221. During the first five years that the amendments would be in effect, the proposed amendments: do not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; do not create a new regulation; do not expand, limit, or repeal an existing regulation but instead consolidate the requirements into one rule; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amendments would be in effect, the proposed amendments will have no effect on the Texas economy.

TAKINGS IMPACT ASSESSMENT. The Commission has determined that no private real property interests are affected by this proposal and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments may be directed to Jelain Chubb, Director, Archives and Information Services, Box 12927, Austin, Texas 78711-2927, or by fax (512) 463-5436.

STATUTORY AUTHORITY. The amendments are proposed under Texas Government Code, §441.102.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Government Code, §§441.101 - 106. No other statutes, articles, or codes are affected by these amendments.

§3.1. Definitions.

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

(1) Born digital publication--A state publication that originates in electronic format.

(2) [~~(1)~~] Commission--The Texas State Library and Archives Commission.

(3) [~~(2)~~] Complex relational database--A database comprised of multiple inter-related tables that is dynamically updated, that contains only minimal narrative text, and that cannot be accurately represented as a set of static HTML pages or a spreadsheet.

(4) [~~(3)~~] Depository library--Any library that the Director and Librarian or the commission designates as a depository library for state publications.

(5) [~~(4)~~] Depository publication--A state publication in any format distributed from or on behalf of the Texas State Library and Archives Commission to a depository library.

(6) [~~(5)~~] Director and Librarian--Chief executive and administrative officer of the Texas State Library and Archives Commission.

(7) [~~(6)~~] Electronic external storage devices--Removable electronic media used to store and transfer electronic information.

(8) [~~(7)~~] Electronic format--A form of recorded information that can be processed by a computer.

(9) [~~(8)~~] Internet connection--A combination of hardware, software and telecommunications services that allows a computer to communicate with any other computer on the worldwide network of networks known as the Internet, and that adheres to the standard protocols listed in Internet standards documents of the Internet Engineering Steering Group, Internet Architecture Board, and Internet community.

(10) [~~(9)~~] Internet publication--A publication that is published on the Internet as a file or files accessible by Internet connection.

(11) [~~(10)~~] On-line--Accessible via a computer or terminal, rather than on paper or other medium.

(12) [~~(11)~~] Physical format--A tangible system for the compilation and presentation of information, including print publications and electronic external storage devices as defined in this chapter.

(13) [~~(12)~~] Print publication--A publication:

(A) that is published in a format that is accessible without the use of a computer, including information published on paper, in microformat, on audio tapes, vinyl discs or audio compact discs, on videotape or film, or on any other media that are not specifically cited in this definition; and

(B) that is not an Internet publication as defined in this section.

(14) [~~(13)~~] Publicly distributed--Provided to persons outside of the agency, in print or other physical medium, or by an Internet connection, or from a limited local area network on agency premises, or at another location on behalf of the agency. Information that is made accessible only through an authentication process, such as a user name and password, or upon request via open records laws, is not deemed publicly distributed.

(15) Report--A report:

(A) that is not confidential, prepared by a state agency in any format and is required by statute, rule, or rider in the General Appropriations Act to be submitted to: the governor, a member, agency, or committee of the legislature, another state agency, and is publicly distributed; and

(B) that is prepared by a state agency in electronic, Internet or online format and is determined appropriate for submission through the Texas Digital Archive by Director and Librarian.

(16) [~~(14)~~] Serial--Issued in successive parts bearing numerical or chronological designations and intended to be continued indefinitely. The term includes, but is not limited to: periodicals, newspapers, reports, yearbooks, journals, minutes, proceedings, and transactions.

(17) [~~(15)~~] Site map--An HTML page providing links to all materials available to the public on a website. A site map can provide links to sections or categories within a website rather than to each individual document if all documents within each section are inter-linked.

(18) [~~(16)~~] State agency--Any entity established or authorized by law to govern operations of the state such as a state office, department, division, bureau, board, commission, legislative committee, authority, institution, regional planning council, university system, institution of higher education as defined by Texas Education Code, §61.003, or a subdivision of one of those entities.

(19) [~~(17)~~] State publication--Information in any format that is produced by the authority of or at the total or partial expense of a state agency or is required to be distributed under law by the agency and is publicly distributed by or for the agency. The term does not include information the distribution of which is limited to contractors with or grantees of the agency, persons within the agency or within other government agencies, or members of the public under a request made under the open records law, Government Code, Chapter 552 if it does not otherwise meet the definition of a state publication.

(20) [~~(18)~~] State Publications Depository Program--A program of the Texas State Library and Archives Commission designed to collect, preserve, and distribute state publications, and promote their use by the citizens of Texas and the United States.

(21) [~~(19)~~] Substantive change--A modification of a state publication in any format that represents a fundamental alteration in the information content of a publication. Examples of a substantive change include but are not limited to:

(A) changes to publicly distributed agency information based on the installation of new leadership in a state agency;

(B) amendments to agency policies, such as reversals of former policies; expansions of authority via statutory means, rule-making authority, or judicial process; or clarifications of existing policies;

(C) provision of new information, such as information reports; and

(D) revisions to previously issued information, such as documents describing the financial status, providing statistical data, or reporting on matters within the agency's area of authority.

(22) Texas Digital Archive--The digital repository maintained and operated by the Texas State Library and Archives Commission for the preservation of and access to permanently valuable copies of archival state records, reports and publications.

(23) [~~(20)~~] Texas Records and Information Locator (TRAIL)--A program of the Texas State Library and Archives Commission designed to locate, index, and make available state publications in electronic format.

(24) [~~(21)~~] Texas State Library and Archives Commission--The staff, collections, archives, and property of the Texas State Library and Archives Commission organized to carry out the commission's responsibilities.

(25) [~~(22)~~] Transitory or inconsequential change--A modification of a state publication in any format that represents a minor alteration of the publication and does not alter the essential content of the original publication. A transitory or inconsequential change includes, but is not limited to: correction of misspellings or typographical errors and the alteration of an Internet publication due to the expiration of textual information that is linked to time-dependent publications (such as press releases or announcements regarding the activities of an agency's programs).

(26) [~~(23)~~] Uniform Resource Locators--The syntax and semantics of formalized information for location and access of resources on the Internet, as specified in Internet standards documents of the Internet Engineering Steering Group, Internet Architecture Board, and Internet community.

(27) Website--A state website maintained by or for a Texas state agency, including an institution of higher education, intended to provide access to state government information, including electronic format state publications. State agency websites, excluding institutions of higher education, are web harvested by the TRAIL service.

§3.2. Standard Requirements for State Publications in All Formats.

(a) State agencies are required to deposit or make accessible copies of all state publications that have not been exempted from the State Publications Depository Program in §3.6 of this title (relating to Standard Exemptions for State Publications in All Formats) or under §3.7 of this title (relating to Special Exemptions).

(b) State agencies are required to display the date that each state publication is produced or distributed in a visible [~~conspicuous~~] location at or near the beginning of the publication.

(c) When a state publication is distributed to the public in multiple formats [~~simultaneously~~], state agencies are required to provide access to or copies of that publication to the commission in all formats in which the publication is publicly distributed. State agencies are not

required to provide copies to the commission of publications on electronic external storage devices if the state publications are made available by an Internet connection.

(d) When a state publication changes frequently, as in the case of an Internet publication that announces time-dependent information, state agencies are required to determine whether the alteration in the publication represents a substantive change or a transitory or inconsequential change. If the modification is a substantive change, the original version and the new version must be treated as separate publications and managed in accordance with §3.3 [§3.4] of this title [chapter] (relating to Standard Deposit and Reporting Requirements for State Publications in All Formats [that are Internet Publications]). If the modification is a transitory or inconsequential change, or if the modification is due only to changes to information that is exempt under §3.6 of this title [chapter] (relating to Standard Exemptions for State Publications in All Formats), the two versions are not deemed to be separate publications.

(e) Records retention. State agencies are reminded that compliance with this chapter does not constitute compliance with records retention rules for state government records. See Texas State Records Retention Schedule (second edition or subsequent edition as applicable) and §§6.1 - 6.10 of this title for complete information about records retention requirements.

(f) Archival publications. For those publications defined as archival (see §6.1 of this title), one copy must be submitted to the Texas State Archives in accordance with §§6.91 - 6.99 of this title.

§3.3. Standard Deposit and Reporting Requirements for State Publications in All Formats [Physical Formats].

(a) The standard number of copies of state publications in physical formats to be deposited is based on the number of copies produced, the type of publication or the medium in which it is made available.

(1) For most state publications in physical formats, four (4) [4] copies must be deposited with the State Publications Depository Program.

(2) Three (3) copies of the following state publications must be deposited with the State Publications Depository Program:

(A) annual financial reports;

(B) annual operating budgets; and

(C) state or strategic plans (for agency services, programs within its jurisdiction).

(3) Two (2) copies of the following state publications must be deposited with the State Publications Depository Program:

(A) requests for legislative appropriations; and

(B) quarterly and annual reports of measures.

(b) For state publications available in electronic format but not by an Internet connection:

(1) State agencies must deposit electronic state publications on electronic external storage devices that are approved by the Director and Librarian and adhere to standards set by the Texas State Library and Archives Commission only when they are not accessible to the public by Internet connection. One (1) copy of all applicable state publications may be submitted.

(2) State agencies must meet the following requirements when submitting state publications on electronic external storage devices:

[(A) Computer Diskette. One (1) copy of all applicable state publications must be submitted on three and one-half inch, 1.44 megabyte high density disks, configured to an MS-DOS platform and formatted in ASCII (American Standard Code for Information Interchange) or other software approved by the Texas State Library and Archives Commission.]

(A) [(B)] Compact Disks--Read-Only Memory. One (1) copy of all applicable state publications must be submitted on disks that adhere to standards of IOS (International Organization of Standards) 9660. Files shall be formatted in ASCII, or other software that is provided and is in the public domain or has been purchased with a license agreement to distribute it with each copy of the disk. If the file is compressed, software and instructions must be included on the disk to decompress all data directly to a hard drive from commands found in a file on the root directory.

(B) [(C)] State Publications on Other Electronic External Storage Devices. For new or improved media that may become commonly available, one (1) copy of all applicable state publications may be submitted. All such devices or media for submitting state publications must be approved by the Director and Librarian and must adhere to standards set by the Texas State Library and Archives Commission.

(c) For state publications available both in physical format and by Internet connection, the publishing agency shall prominently display the publication's specific and exact Internet address (the uniform resource locator on the agency's website) on the cover or title page of the publication.

(d) Reporting.

(1) Each state agency must submit a publication reporting form that lists and describes state publications in physical formats as they become available.

(2) At the time that a state publication is submitted in physical format, the publication reporting form must be enclosed with the shipment.

(3) For each state publication that is available both in physical format and by Internet connection, the publication reporting form must include the publication's specific and exact Internet address (the uniform resource locator on the agency's website).

(e) The Texas Records and Information Locator (TRAIL) service provides access to state publications in electronic format that are made available to the public by an Internet connection on a State Agency website. State agency websites are crawled periodically each fiscal year by and are accessible through the TRAIL service. State agencies are not required to submit copies of their state agency website in any format to the depository program if the website is made available by an Internet connection. The following are minimum technical requirements for the web harvesting of state agency electronic format publications and websites through the TRAIL service.

(1) State agencies are required to provide the Texas State Library and Archives Commission with guaranteed access, at no charge, to the agencies' Internet publications. If a "robots.txt" file is used to prevent harvesting of a State Agency website, then that file must include an exception for TSLAC's designated harvesting system.

(2) State agencies must meet the following minimum requirements when providing state publications in electronic format by Internet connection on their website:

(A) Accessibility. State publications made available by an Internet connection on a state agency website shall be accessible:

(i) by anonymous File Transfer Protocol (FTP), Hyper Text Transfer Protocol (HTTP) or other electronic means as defined in Internet standards documents of the Internet Engineering Steering Group, Internet Architecture Board, and Internet community;

(ii) by following a link or series of links from the Agency's primary URL. For publications accessible only by database searching or similar means, an alternative path such as a hidden link to a comprehensive site map must be provided except as exempted in §3.5 of this title; and

(iii) on alternative electronic formats and interfaces consistent with requirements of the Americans with Disabilities Act of 1990 and as amended.

(B) Availability. Each original Internet publication and subsequent versions as described in §3.2(c) of this title must remain available on the agency website for nine months to ensure that the publication has been collected by TSLAC and made available in the TRAIL archive. Agencies can confirm that a version of an Internet publication has been added to the TRAIL archive by searching at www.tsl.texas.gov/trail/index.html.

(3) Each electronic format state publication made available by Internet connection must contain descriptive information about the publication.

(4) For electronic format state publications that are not made available to the public by Internet connection on a state agency website and are required for submission to the State Publications Depository Program, publications may be submitted on approved electronic external storage devices as described in Standard Deposit and Reporting Requirements for State Publications in All Formats (see §3.3(b)(1) of this title).

(5) For certain reports (see §3.1(15)(B) of this title) that are born-digital and determined appropriate for submission through the Texas Digital Archive by Director and Librarian, for submission requirements.

(6) State agencies are advised to review the rules in 1 TAC §206.53 and §206.54 (relating to Linking and Indexing State websites).

(7) TRAIL is a searchable index of state agency Internet publications and is in compliance with the ANSI/NISO (American National Standards Institute/National Information Standards Organization) Z39.50 search and retrieval standard or successor standards, and that shall adhere to the application profile of the Federal Information Processing Standards Publication 192 or its successor document.

(f) The Texas Digital Archive (TDA) provides access to publications of certain reports that are:

(1) first published in electronic format;

(2) submitted electronically as defined in §3.1(15) of this title, concerning Definitions; and

(3) required to be submitted through the State Publications Depository Program (see §3.2 of this title). Submission under these rules are for certain reports and publications that are prepared and created after this rule takes effect and does not include previously submitted publications in any format.

(g) State agencies are required to provide the Texas State Library and Archives Commission, at no charge, an electronic format of the publication as defined in §3.1(15) of this title, concerning Definitions and §3.2(a) of this title, concerning Standard Requirements for State Publications in All Formats.

(h) Submissions of other state publications in electronic, Internet or online format will be accepted at the determination of the Director and Librarian.

(i) State agencies must meet all the following minimum requirements when submitting state publications in electronic format. Submissions must include:

(1) An individual electronic file. State publications submitted in electronic format must be a Portable Document File (PDF) or other secure file type; other file types will be accepted at the determination of the Director and Librarian. Submissions cannot be a link or series of links to the state publication.

(2) A publication reporting form. At the time of submission, a publication reporting form must be included. Submissions provided through electronic communications must be from a state agency email address.

(3) Descriptive file information. State publications submitted in electronic format must include descriptive information in:

(A) a Title tag;

(B) an Author tag--author meta tag that includes the official name of the state agency responsible for creating the report;

(C) a Description tag--description meta tag that includes a narrative description of the publication; and

(D) a Keyword or Subject tag--keyword meta tag that includes selected terms from within the publication.

(j) State agencies should retain a copy of their electronic publication, as submitted to the Texas State Library and Archives Commission, until the publication is posted to the Texas Digital Archive. Agencies can confirm that the electronic publication was accepted and added to the Texas Digital Archive by searching at www.tsl.texas.gov.

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

Filed with the Office of the Secretary of State on October 25, 2018.

TRD-201804674
Jelain Chubb
Director
Texas State Library and Archives Commission
Earliest possible date of adoption: December 9, 2018
For further information, please call: (512) 463-5467

13 TAC §3.4

The Texas State Library and Archives Commission (Commission) proposes the repeal of 13 TAC §3.4, relating to the standard deposit and reporting requirements for state publications that are internet publications.

The repeal is proposed concurrently with amendments to 13 TAC §3.1 - 3.3, which incorporate the requirements contained in §3.4, thereby making the rule no longer necessary.

Elsewhere in this issue of the *Texas Register,* the Commission contemporaneously filed a notice of intent to review the rules at 13 TAC §3.1 - 3.8, State Publications Depository Program, in its entirety.

FISCAL NOTE. Mark Smith, State Librarian and Director for the Commission, has determined that for the first five-year period this repeal is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal. As these rules pertain only to state records, there is no effect on local economies for the first five years that the proposed repeal is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022. Similarly, the proposed repeal does not impose a cost on regulated persons and, therefore, are not subject to Texas Government Code, §2001.0045.

PUBLIC BENEFIT/COST NOTE. Mr. Smith has also determined that for each year of the first five-year period the repeal is in effect the public benefit anticipated will be streamlining and clarifying the rules relating to the standard deposit and reporting requirements for all state publications. There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. There is no direct adverse economic impact for small businesses, microbusinesses, and rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT. Staff prepared a Government Growth Impact Statement for this proposed rulemaking, as specified in Texas Government Code §2001.0221. During the first five years that the repeal would be in effect, the proposed repeal: does not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; do not create a new regulation; do not expand, limit, or repeal an existing regulation but instead consolidate the requirements into one rule; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the repeal would be in effect, the proposed repeal will have no effect on the Texas economy.

TAKINGS IMPACT ASSESSMENT. The Commission has determined that no private real property interests are affected by this proposal and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed repeal may be directed to Jelain Chubb, Director, Archives and Information Services, Box 12927, Austin, Texas 78711-2927, or by fax (512) 463-5436.

STATUTORY AUTHORITY. The repeal is proposed under Texas Government Code, §441.102.

CROSS REFERENCE TO STATUTE. This repeal is implemented in Texas Government Code, §§441.101 - 441.106. No other statutes, articles, or codes are affected by this repeal.

§3.4. Standard Deposit and Reporting Requirements for State Publications that are Internet Publications.

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

Filed with the Office of the Secretary of State on October 29, 2018.

TRD-201804695
Jelain Chubb
Director
Texas State Library and Archives Commission
Earliest possible date of adoption: December 9, 2018
For further information, please call: (512) 463-5467

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 76. EXTRACURRICULAR ACTIVITIES

SUBCHAPTER AA. COMMISSIONER'S RULES

19 TAC §76.1001

The Texas Education Agency (TEA) proposes an amendment to §76.1001, concerning extracurricular activities. The proposed amendment would allow a student who has not passed all his or her classes but who is enrolled in a state-approved music course that participates in University Interscholastic League (UIL) Concert and Sightreading Evaluation to perform with the ensemble during the UIL evaluation performance.

Texas Education Code (TEC), §7.055(b)(41), requires the commissioner of education to adopt rules relating to extracurricular activities under TEC, §33.081, which limits the participation in and practice for extracurricular activities during the school day and the school week and establishes the parameters and exemptions of student participation in an extracurricular activity or a UIL competition as they relate to student grades.

Section 76.1001 establishes definitions, requirements, exceptions, and procedures for participation in and practice for extracurricular activities during the school day and school week.

Section 76.1001(a) defines an extracurricular activity as one that is sponsored by the UIL, the school district board of trustees, or an organization that has been sanctioned by the board of trustees. The activity is not necessarily directly related to instruction of the essential knowledge and skills but may have an indirect relation to some areas of the curriculum.

Currently, all UIL competitions are considered extracurricular and, therefore, are subject to students meeting certain grade requirements under TEC, §33.081(c), to be eligible for participation. The UIL Concert and Sightreading Evaluation for music ensembles is the only UIL event in which participants do not compete against others. Ensembles receive a rating, there are no winners named, and ensembles do not advance toward another level of competition that culminates in a state championship. Participation in the contest is the culmination of a long-term project-based-learning curricular experience that is an extension of the classroom. To emphasize the event's purpose as being evaluative rather than competitive, the UIL Legislative Council changed the name of the event from UIL Concert and Sightreading Contest to UIL Concert and Sightreading Evaluation in November 2017.

Because UIL Concert and Sightreading Evaluation is curricular in nature and is not a competition among participants, TEA has determined that the event should not be subject to the grade requirements under TEC, §33.081(c).

The proposed amendment would add new subsection (a)(3) to allow students who have not passed all their classes but who are enrolled in a state-approved music course that participates in UIL Concert and Sightreading Evaluation to perform with the ensemble during the UIL evaluation performance.

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

FISCAL NOTE. Monica Martinez, associate commissioner for standards and support services, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering the amendment.

There is no effect on local economy for the first five years that the proposed amendment is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022. The proposed amendment does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT. TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT/COST NOTE. Ms. Martinez has determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment would be providing districts flexibility to allow certain students to participate in the UIL Concert and Sightreading Evaluation that is often associated with state-approved music courses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. There is no direct adverse economic impact for small businesses, microbusinesses, and rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins November 9, 2018, and ends December 10, 2018. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/. Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on November 9, 2018.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §7.055(b)(41), which requires the commissioner of education to adopt rules relating to extracurricular activities under TEC, §33.081, which limits the participation in and practice for extracurricular activities during the school day and the school week and establishes the parameters and exemptions of student participation in an extracurricular activity or a University Interscholastic League competition as they relate to student grades.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §7.055(b)(41).

§76.1001. Extracurricular Activities.

(a) An extracurricular activity is an activity sponsored by the University Interscholastic League (UIL), the school district board of trustees, or an organization sanctioned by resolution of the board of trustees. The activity is not necessarily directly related to instruction of the essential knowledge and skills but may have an indirect relation to some areas of the curriculum. Extracurricular activities include, but are not limited to, public performances, contests, demonstrations, displays, and club activities, with the exception of public performances specified in paragraphs [~~paragraph~~] (2) and (3) of this subsection.

(1) In addition, an activity shall be subject to the provisions for an extracurricular activity if any one of the following criteria apply:

(A) the activity is competitive;

(B) the activity is held in conjunction with another activity that is considered to be extracurricular;

(C) the activity is held off campus, except in a case in which adequate facilities do not exist on campus;

(D) the general public is invited; or

(E) an admission is charged.

(2) A student ineligible to participate in an extracurricular activity, but who is enrolled in a state-approved course that requires demonstration of the mastery of the essential knowledge and skills in a public performance, may participate in the performance subject to the following requirements and limitations.

(A) Only the criterion listed in paragraph (1)(D) of this subsection applies to the performance.

(B) The requirement for student participation in public is stated in the essential knowledge and skills of the course.

(3) A student ineligible to participate in an extracurricular activity, but who is enrolled in a state-approved music course that participates in UIL Concert and Sightreading Evaluation, may perform with the ensemble during the UIL evaluation performance.

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

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

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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CHAPTER 97. PLANNING AND ACCOUNTABILITY
SUBCHAPTER EE. ACCREDITATION STATUS, STANDARDS, AND SANCTIONS
DIVISION 1. STATUS, STANDARDS, AND SANCTIONS

19 TAC §97.1073

The Texas Education Agency (TEA) proposes an amendment to §97.1073, concerning appointment of monitor, conservator, or board of managers. The proposed amendment would clarify who must complete the training in effective leadership strategies required under Texas Education Code (TEC), §39A.205, and specify a timeframe for completion.

Section 97.1073 implements the TEC, §39A.205, by establishing criteria and procedures for the appointment of monitor, conservator, or board of managers.

The proposed amendment would clarify in subsection (h) that elected board of trustees members who are appointed to a board of managers under subsection (g)(4) must complete the training in effective leadership strategies required under TEC, §39A.205. This change is necessary to make clear that board of trustees members who are appointed to serve on a board of managers are expected to be trained in effective leadership strategies. The amendment additionally clarifies in subsection (h) that the training in effective leadership strategies required under TEC, §39A.205, must be provided by TEA-approved authorized providers, which were not in existence at the time the rule was initially adopted. Finally, the amendment would require in subsection (i) that the training be completed by board of trustees members appointed under subsection (g)(4) prior to or within 10 days of the appointment and that failure to do so may result in the removal of the trustee from the board of managers. This would ensure that new members receive the required training in a timely manner during the period of the board of managers appointment.

The proposed amendment does not have any procedural or reporting implications.

The proposed amendment does not create any new locally maintained paperwork requirements. Training records are currently required to be maintained at the district level.

FISCAL NOTE. A.J. Crabill, deputy commissioner for governance, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering the amendment. Appointees to a board of managers and school district trustees presently attend mandatory training and continuing education seminars and are unlikely to experience any significant increase in costs or fees charged by training providers resulting from the inclusion of effective leadership strategy training within the existing training curriculum.

There is no effect on local economy for the first five years that the proposed amendment is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022. The proposed amendment does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT. TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Crabill has determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment would be ensuring that board members who are appointed to a board of managers are trained in effective leadership strategies as required by TEC, §39A.205. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. There is no direct adverse economic impact for small businesses, microbusinesses, and rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins November 9, 2018, and ends December 10, 2018. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/. Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on November 9, 2018.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code, §39A.205, which requires the commissioner of education to provide individuals appointed to a board of managers with training in effective leadership strategies.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §39A.205.

§97.1073. Appointment of Monitor, Conservator, or Board of Managers.

(a) The commissioner of education shall appoint a monitor, conservator, management team, or board of managers whenever such action is required, as determined by this section. Action under any other section of this subchapter is not a prerequisite to acting under this section.

(b) The commissioner may appoint a monitor under Texas Education Code (TEC), §39A.002, when:

(1) the district has an accreditation rating of Accredited-Warned or Accredited-Probation;

(2) a monitor is needed to ensure district-level support to low-performing campuses and the implementation of the updated targeted improvement plan; or

(3) all of the following exist:

(A) the deficiencies identified under §97.1059 of this title (relating to Standards for All Accreditation Sanction Determinations) require a monitor to participate in and report to the commissioner on the activities of the district's board of trustees and superintendent;

(B) the deficiencies identified under §97.1059 of this title are not of such severity or duration as to require direct Texas Education Agency (TEA) oversight of district operations;

(C) the district has been responsive to and generally compliant with previous commissioner sanctions and TEA interventions; and

(D) stronger intervention is not required to prevent substantial or imminent harm to the welfare of the district's students or to the public interest.

(c) The commissioner may appoint a conservator or management team under TEC, §§39A.002, 39A.003, 39A.006, and 39A.102, when:

(1) the district has an accreditation rating of Accredited-Probation;

(2) a conservator or management team is needed to ensure and oversee district-level support to low-performing campuses and the implementation of the updated targeted improvement plan;

(3) the nature or duration of the deficiencies require that the TEA directly oversee the operations of the district in the area(s) of deficiency;

(4) the district has not been responsive to or compliant with TEA intervention requirements; or

(5) such intervention is needed to prevent substantial or imminent harm to the welfare of the district's students or to the public interest.

(d) The decision whether to appoint a conservator or management team under subsection (c) of this section may be based on logistical concerns, including the competencies required and the volume of work involved. The addition of a conservator to form a management team or the addition of additional members to the management team is not a new sanction and does not entitle the district to an additional review.

(e) The commissioner may appoint a board of managers under TEC, §§39A.004, 39A.006, 39A.102, 39A.107, 39A.111, 39A.256, or 12.116(d)(1), as applicable, when:

(1) sanctions under subsection (b) or (c) of this section have been ineffective to achieve the purposes identified in §97.1057 of this title (relating to Interventions and Sanctions; Lowered Rating or Accreditation Status);

(2) the commissioner has initiated proceedings to close or annex the district;

(3) the commissioner has initiated proceedings to close a campus, and such intervention is needed to cease operations of the campus;

(4) such intervention is needed to prevent substantial or imminent harm to the welfare of the district's students or to the public interest;

(5) a board of managers is needed to ensure and oversee district-level support to low-performing campuses and the implementation of the updated targeted improvement plan;

(6) the district has a campus that is subject to TEC, §39A.111, and the commissioner does not order the closure of the campus;

(7) deficiencies identified in a special accreditation investigation warrant the appointment of a board of managers; or

(8) a failure in governance results in an inability to carry out the powers and duties of the board of trustees as outlined in TEC, §11.151 and §11.1511.

(f) Not later than the second anniversary date of the appointment of the board of managers, the commissioner shall notify the board of managers and the board of trustees of the date on which the appointment of the board of managers will expire.

(g) A board of managers shall, during the period of the appointment, order the election of members of the board of trustees of the district in accordance with applicable provisions of law. Except as provided by this subsection, the members of the board of trustees do not assume any powers or duties after the election until the appointment of the board of managers expires.

(1) An individual elected to the board of trustees at an election ordered under this subsection assumes and may exercise all powers and duties of that office at the first official board meeting where the replacement of the member of the board of managers with the elected board of trustees [~~trustee~~] member occurs and after satisfying all legal and procedural prerequisites to take office.

(2) Any member of the board of trustees elected during the appointment of the board of managers who has not yet assumed the powers and duties of a member of the board of trustees will not be considered for purposes of constitution of a quorum.

(3) A board of managers shall order elections for trustees with three-year terms to be held annually in accordance with TEC, §11.059(b). Following each of the last three years of the period of appointment, one-third of the members of the board of managers shall be replaced by the number of members of the school district board of trustees who were elected at an election ordered under this paragraph that constitutes, as closely as possible, one-third of the membership of the board of trustees.

(4) A board of managers shall order elections for trustees with four-year terms to be held biennially in accordance with TEC, §11.059(c). Following each of the last three years of the period of appointment, one-third of the members of the board of managers shall be replaced by the number of members of the school district board of trustees who were elected at an election ordered under this paragraph that constitutes, as closely as possible, one-third of the membership of the board of trustees.

(5) Upon the appointment of a board of managers to a school district, the commissioner will designate the sequence in which the board of managers' member groups and eligible board of trustees' member groups, the number of which constitutes, as closely as possible, one-third of the membership of the board of trustees, will be replaced by an equal number of elected board of trustees [~~trustee~~] members. The commissioner may modify the composition or number of members constituting those groups at any time during the period of the appointment.

(6) The commissioner may at any time remove and/or replace a member of the board of managers and may expand or reduce the number of the board of manager members at any time during the appointment of the board of managers.

(7) On the expiration of the appointment of the board of managers, the board of trustees assumes all of the powers and duties assigned to a board of trustees of the school district.

(8) The commissioner may designate the sequence in which an eligible trustee of the board of trustees will replace a member of the board of managers. If the commissioner makes such designation, a trustee replacing a manager would complete the remainder of his or her elected term upon placement to the transitioning board. In the absence of a designation by the commissioner, the trustees elected in an election following each of the last three years of the board of managers' appointment, as determined by the commissioner, shall replace the designated members of the board of managers, except as follows.

(A) In the event that the number of trustees elected in the first election exceeds one-third of the total board of trustees [~~trustee~~] membership, the board of managers shall determine by lot which of those trustees shall be selected to initially replace members of the board of managers and assume positions on the board.

(B) Any remaining trustees elected at the first election ordered under this paragraph shall replace an equivalent number of members of the board of managers and assume positions on the board in the following year, together with any trustees elected in the second election ordered by the board of managers under this paragraph.

(C) In the event that the total number of previously elected trustees who have not yet assumed positions on the board exceeds one-third of the total board of trustees [~~trustee~~] membership, the trustees elected at the first election ordered under this paragraph shall receive priority in the order of placement on the board, followed by trustees elected at the second election, who shall be selected by lot by the board of managers.

(D) Any trustees elected in the third election ordered by the board of managers under this paragraph shall replace an equivalent number of members of the board of managers and assume positions on the board following the last year of the period of the board of managers' appointment.

(h) The training in effective leadership strategies required under TEC, §39A.205, shall be provided by TEA-approved authorized [~~registered~~] providers of school board training to each individual appointed by the commissioner to a board of managers, including board of trustees members appointed under subsection (g)(4) of this section, and, following the expiration of the appointment of the board of managers, to the board of trustees of the school district.

(i) A board of trustees member appointed under subsection (g)(4) of this section must complete the training required in subsection (h) of this section prior to or within 10 days of the appointment. Failure to do so may result in the removal of the board of trustees member from the board of managers.

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

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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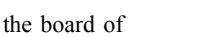

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION
SUBCHAPTER C. ASSESSMENT OF MAINTENANCE TAXES AND FEES

28 TAC §1.414

The Texas Department of Insurance proposes amendments to 28 TAC §1.414, concerning the 2019 assessment of maintenance taxes and fees imposed by the Insurance Code. The proposed amendments are necessary to adjust the rates of assessment for maintenance taxes and fees for 2019 on the basis of gross premium receipts for calendar year 2018.

EXPLANATION. Section 1.414 includes rates of assessment to be applied to life, accident, and health insurance; motor vehicle insurance; casualty insurance and fidelity, guaranty, and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; workers' compensation self-insured groups; title insurance; health maintenance organizations (HMOs); third party administrators; nonprofit legal services corporations issuing prepaid legal services contracts; and workers' compensation certified self-insurers.

The department proposes an amendment to the section heading to reflect the year for which the proposed assessment of maintenance taxes and fees is applicable. The department also proposes amendments in subsections (a) - (f), and (h) to reflect the appropriate year for accurate application of the section.

The department proposes amendments in subsections (a)(1) - (9), (c)(1) - (3), (d), (e), and (f) to update rates to reflect the methodology the department developed for 2019.

The following paragraphs provide an explanation of the methodology used to determine proposed rates of assessment for maintenance taxes and fees for 2019:

In general, the department's 2019 revenue need (the amount that must be funded by maintenance taxes or fees; examination overhead assessments; the department's self-directed budget account, as established under Insurance Code §401.252; and premium finance examination assessments) is determined by calculating the department's total cost need, and subtracting from that number funds resulting from fee revenue and funds remaining from fiscal year 2018.

To determine total cost need, the department combined costs from the following: (i) appropriations set out in Chapter 605 (Senate Bill 1), Acts of the 85th Legislature, Regular Session, (2017) (the General Appropriations Act), which come from two funds, the General Revenue Dedicated - Texas Department of Insurance Operating Account No. 0036 (Account No. 0036) and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) funds allowed by Insurance Code Chapter 401, Subchapters D and F, as approved by the Commissioner for the self-directed budget account in the Treasury Safekeeping Trust Company to be used exclusively to pay examination costs associated with salary, travel, or other personnel expenses and administrative support costs; (iii) an estimate of other costs statutorily required to be paid from those two funds and the self-directed budget account, such as fringe benefits and statewide allocated costs; and (iv) an estimate of the cash amount necessary to finance both funds and the self-directed budget account from the end of the 2019 fiscal year until the next assessment collection period in 2020. From these combined costs, the department subtracted costs allocated to the Division of Workers' Compensation (DWC) and the Workers' Compensation Research and Evaluation Group.

The department determined how to allocate the remaining cost need to be attributed to each funding source using the following method:

For each section within the department that provides services directly to the public or the insurance industry, the department allocated the costs for providing those direct services on a percentage basis to each funding source, such as the maintenance tax or fee line, the premium finance assessment, the self-directed budget account, the examination assessment, or another funding source. The department applied these percentages to each section's annual budget to determine the total direct cost to each funding source. The department calculated the percentage for each funding source by dividing the total directly allocated to each funding source by the total direct cost. The department used this percentage to allocate administrative support costs to each funding source. Examples of administrative support costs include services provided by human resources, accounting, budget, the Commissioner's administration, and information technology. The department calculated the total direct costs and administrative support costs for each funding source.

The General Appropriations Act includes appropriations to state agencies other than the department that must be funded by Account No. 0036 and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees. The department added these costs to the sum of the direct costs and the administrative support costs for the appropriate funding source, when possible. For instance, the department allocates an appropriation to the Texas Department of Transportation for the crash information records system to the motor vehicle maintenance tax. The department included costs for other agencies that cannot be directly allocated to a funding source to the administrative support costs. For instance, the department included an appropriation to the Texas Facilities Commission for building support costs in administrative support costs.

The department calculated the total revenue need after completing the allocation of costs to each funding source. To complete the calculation of revenue need, the department removed costs, revenues received, and fund balance related to the self-directed budget account. Based on remaining balances, the department reduced the total cost need by subtracting the estimated ending fund balance for fiscal year 2018 (August 31, 2018) and estimated fee revenue collections for fiscal year 2019. The resulting balance is the estimated revenue need that must be supported during the 2019 fiscal year by the following funding sources: the maintenance taxes or fees, exam overhead assessments, and premium finance assessments.

The department determined the revenue need for each maintenance tax or fee line by dividing the total cost need for each maintenance tax line by the total of the revenue needs for all maintenance taxes. The department multiplied the calculated percentage for each line by the total revenue need for maintenance taxes. The resulting amount is the revenue need for each maintenance tax line. The department adjusted the revenue need by subtracting the estimated amount of fee and reimbursement revenue collected for each maintenance tax or fee line from the total of the revenue need for each maintenance tax or fee line. The department further adjusted the resulting revenue need as described below.

The cost allocated to the life, accident, and health maintenance tax exceeds the amount of revenue that can be collected at the maximum rate set by statute. The department allocated the difference between the amount estimated to be collected at the maximum rate and the costs allocated to the life, accident, and health maintenance tax to the other maintenance tax or fee lines. The department allocated the life, accident, and health shortfall based on each of the remaining maintenance tax or fee lines a proportionate share of the total costs for maintenance taxes or fees. The department used the adjusted revenue need as the basis for calculating the maintenance tax rates.

For each line of insurance, the department divided the adjusted revenue need by the estimated premium volume or assessment base to determine the rate of assessment for each maintenance tax or fee.

The following paragraphs provide an explanation of the methodology to develop the proposed rates for DWC and the Office of Injured Employee Counsel (OIEC):

To determine the revenue need, the department considered the following factors applicable to costs for DWC and OIEC: (i) the appropriations in the General Appropriations Act for fiscal year 2019 from Account No. 0036; (ii) estimated other costs statutorily required to be paid from Account No. 0036, such as fringe benefits; and (iii) an estimated cash amount to finance Account No. 0036 costs from the end of the 2019 fiscal year until the next assessment collection period in 2020. The department added these three factors to determine the total revenue need.

The department reduced the total revenue need by subtracting the estimated fund balance at August 31, 2018, and the DWC fee and reimbursement revenue estimate to be collected and deposited to Account No. 0036 in fiscal year 2019. The resulting balance is the estimated revenue need from maintenance taxes. The department calculated the maintenance tax rate by dividing the estimated revenue need by the combined estimated workers' compensation premium volume and the certified self-insurers' liabilities plus the amount of expense incurred for administration of self-insurance.

The following paragraphs provide an explanation of the methodology the department used to develop the proposed rates for the Workers' Compensation Research and Evaluation Group.

To determine the revenue need, the department considered the following factors that are applicable to the Workers' Compen-

sation Research and Evaluation Group: (i) the appropriations in the General Appropriations Act for fiscal year 2019 from Account No. 0036 and from the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) estimated other costs statutorily required to be paid from this funding source, such as fringe benefits; and (iii) an estimated cash amount to finance costs from this funding source from the end of the 2019 fiscal year until the next assessment collection period in 2020. The department added these three factors to determine the total revenue need.

The department reduced the total revenue need by subtracting the estimated fund balance at August 31, 2018. The resulting balance is the estimated revenue need from maintenance taxes. The department calculated the maintenance tax rate by dividing the estimated revenue need by the estimated assessment base.

Insurance Code §964.068 provides that a captive insurance company is subject to maintenance tax under Subtitle C, Title 3, on the correctly reported gross premiums from writing insurance on risks located in Texas as applicable to the individual lines of business written. The rates proposed in this rule will be applied to captive insurance companies based on the individual lines of business written, unless the Commissioner postpones or waives the tax for a period not to exceed two years for any foreign or alien captive insurance company redomesticating to Texas under Insurance Code §964.071(c).

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Joe Meyer, assistant director of Financial Services, has determined that for each year of the first five years the proposal will be in effect, the expected fiscal impact on state government is an estimated income of $147,569,182 to the state's general revenue fund. There will be no fiscal implications for local government as a result of enforcing or administering the proposed section, because local governments are not involved in enforcing or complying with the proposed amendments, and there will be no effect on local employment or local economy.

PUBLIC BENEFIT AND COST NOTE. Mr. Meyer also has determined that for each year of the first five years the amended section is in effect, the public benefit expected as a result of enforcing the section will be the collection of maintenance tax and fee assessments that accurately reflect the department's needs and correctly allocate the cost among the entities regulated by the department.

The cost in 2019 to an insurer that received premiums in 2018 will be: for motor vehicle insurance, .049 of 1 percent of those gross premiums; for casualty insurance and fidelity, guaranty, and surety bonds, .053 of 1 percent of those gross premiums; for fire insurance and allied lines, including inland marine, .303 of 1 percent of those gross premiums; for workers' compensation insurance, .069 of 1 percent of those gross premiums; and for title insurance, .078 of 1 percent of those gross premiums.

An insurer that receives premiums for workers' compensation insurance in 2018 will also pay 2 percent of that premium for the operation of DWC and OIEC and .034 of 1 percent of that premium to fund the Workers' Compensation Research and Evaluation Group's activities. A workers' compensation self-insurance group will pay 2 percent of its 2018 gross premium for the group's retention under Labor Code §407A.301 and .069 of 1 percent of its 2018 gross premium for the group's retention under Labor Code §407A.302.

The cost in 2019 for an insurer that received premiums in 2018 for life, health, and accident insurance, will be .040 of 1 percent of those gross premiums. In 2019, an HMO will pay $.24 per enrollee if it is a single service HMO or a limited service HMO, and $.72 per enrollee if it is a multiservice HMO. In 2019, a third party administrator will pay .008 of 1 percent of its correctly reported gross amount of administrative or service fees received in 2018. In 2019, for a nonprofit legal services corporation issuing prepaid legal services contracts, the cost will be .010 of 1 percent of correctly reported gross revenues for 2018.

In 2019, to fund the Workers' Compensation Research and Evaluation Group's activities, a workers' compensation certified self-insurer will pay .034 of 1 percent of the tax base calculated under Labor Code §407.103(b), and a workers' compensation self-insurance group will pay .034 of 1 percent of the tax base calculated under Labor Code §407A.301(c).

Finally, in 2019, a workers' compensation certified self-insurer will pay 2 percent of the tax base calculated under Labor Code §407.103(b).

Except for workers' compensation certified self-insurers, there are two components of costs for entities required to comply with the proposal: the cost to gather the information, calculate the assessment, and complete the required forms; and the cost of the maintenance tax or fee. Typically, a person familiar with the accounting records of the company and accounting practices in general will perform the activities necessary to comply with the section. These persons are similarly compensated between $26 and $44 an hour.

The actual time necessary to complete the form will vary depending on the number of lines of insurance written by the company. For a company that writes only one line of business subject to the tax, the department estimates it will take two hours to complete the form. If a company writes all the lines subject to the tax, the department estimates it will take six hours to complete the form. In the case of a certified self-insurer, DWC will calculate the maintenance tax and bill the certified self-insurer. The requirement to pay the maintenance tax or fee is the result of the legislative enactment of the statutes that impose the maintenance tax or fee and is not a result of the adoption or enforcement of this proposal.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code §2006.002(c), the department has determined the proposal may have an adverse economic effect on approximately 117 insurance companies and HMOs and approximately 541 third party administrators that are small or micro businesses required to comply with the proposed rules. Adverse economic impact may result from the costs of the maintenance taxes and fees. The cost of compliance will not vary between large businesses and small or micro businesses, and the department's cost analysis and resulting estimated costs in the public benefit and cost note portion of this proposal is equally applicable to small or micro businesses.

The total cost of compliance to large businesses and small or micro businesses does not depend on the size of the business. For insurers in the following lines of insurance, the cost of compliance depends on the amount of gross premiums in 2018: motor vehicle insurance; casualty insurance and fidelity, guaranty, and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; title insurance; and life, health, and accident insurance. For annuity and endowment contracts, the cost of compliance depends on the amount of gross considerations in 2018. For HMOs, the cost of compli-

ance depends on the number of enrollees in 2018. For third party administrators, the cost of compliance depends on the amount of correctly reported gross administrative or service fees in 2018. For nonprofit legal services corporations issuing prepaid legal services contracts, the cost of compliance depends on the correctly reported gross revenues. For workers' compensation certified self-insurers and workers' compensation certified self-insurance groups, the cost of compliance depends on the tax base calculated under Labor Code §407.103(b).

In accordance with Government Code §2006.002(c-1), the department considered other regulatory methods to accomplish the objectives of the proposal that will also minimize any adverse impact on small and micro businesses.

The primary objective of the proposal is to provide the rates of assessment for maintenance taxes and fees for 2019 to be applied to life, accident, and health insurance; motor vehicle insurance; casualty insurance and fidelity, guaranty and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; workers' compensation self-insured groups; title insurance; HMOs; third party administrators; nonprofit legal services corporations issuing prepaid legal services contracts; and workers' compensation certified self-insurers.

The other regulatory methods considered by the department to accomplish the objectives of the proposal and to minimize any adverse impact on small and micro businesses include: (i) not adopting the proposed rule, (ii) adopting different tax rates for small and micro businesses, and (iii) exempting small and micro businesses from the tax requirements.

Not adopting the proposed rule. Under Insurance Code §251.003, if the Commissioner does not advise the Comptroller of the applicable maintenance tax assessment rates, the Comptroller must assess taxes based on the previous year's assessment. Using the previous year's rates and the estimated assessment bases for 2018, the department estimates revenue collections would exceed amounts needed by approximately $9.4 million. If no rule is adopted, the Comptroller would collect too much revenue to fund the department's costs. The department has rejected this option.

Adopting different taxes for small and micro businesses. The current methodology is already the most equitable methodology the department can develop. The department applies an assessment methodology that contemplates a smaller assessment for small or micro businesses because the assessment is determined based on number of enrollees, gross premiums, or gross amount of administrative or service fees. The department anticipates that a small or micro business that would be most susceptible to economic harm would be one that has fewer enrollees, lower gross premiums, or a lower gross amount of administrative or service fees. However, based on the proposed rule, a small or micro business would pay a smaller assessment, and would reduce its risk of economic harm. The department has rejected this option.

Exemption of small and micro businesses from the tax requirements. As noted above, the current methodology is already the most equitable methodology the department can develop. The tax methodology currently used contemplates a small business paying lower maintenance taxes because assessments are based on number of enrollees, gross premiums, or gross amount of administrative or service fees. A small or micro business that has fewer enrollees, has lower gross premiums, or receives fewer gross administrative or service fees would be assessed lower taxes. If the assessment were completely eliminated for small or micro businesses, the department would need to completely revise its calculations to shift costs to other insurers and entities, which would result in a less balanced methodology. The department has rejected this option.

The department, after considering the purpose of the authorizing statutes, does not believe it is legal or feasible to waive or modify the requirements of the proposal for small and micro businesses.

The department has determined that the proposal will not have an adverse economic effect on rural communities, because maintenance taxes and fees are not collected from rural communities. As a result, and in accordance with Government Code §2006.002(c), it is not necessary for the department to address rural communities in its regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. The department has determined that the proposed amendments do impose a possible cost on regulated persons. However, no additional rule amendments or repeals are required under Government Code §2001.0045 because the proposed amendments are necessary to implement legislation. Insurance Code §§201.001(a)(1), (b), and (c); 201.052(a), (d), and (e); 251.001; 252.001 - 252.003; 253.001 - 253.003; 254.001 - 254.003; 255.001 - 255.003; 257.001 - 257.003; 258.002 - 258.004; 259.002 - 259.004; 260.001 - 260.003; 271.002 - 271.006; and 36.001; and Labor Code §§403.002, 403.003, 403.005, 405.003(a) - (c), 407.103, 407.104(b), 407A.301, and 407A.302 direct the department to annually impose maintenance taxes and fees on each authorized insurer and the proposed amendments are necessary to comply with this requirement.

GOVERNMENT GROWTH IMPACT STATEMENT. During the first five years that the proposed rule would be in effect, the proposed rule or its implementation:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will require decreases in fees paid to the agency;

- will not create a new regulation;

- will not expand, limit, or repeal existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Submit any written comments on the proposal no later than 5:00 p.m., Central time, on December 10, 2018, by mail to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104; or by email to chief-

clerk@tdi.texas.gov. Separately, submit any request for a public hearing to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, before the close of the public comment period. If the department holds a hearing, the department will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. The amendments are proposed under Insurance Code §§201.001(a)(1), (b), and (c); 201.052(a), (d), and (e); 251.001; 252.001 - 252.003; 253.001 - 253.003; 254.001 - 254.003; 255.001 - 255.003; 257.001 - 257.003; 258.002 - 258.004; 259.002 - 259.004; 260.001 - 260.003; 271.002 - 271.006; 964.068; and 36.001; and Labor Code §§403.002, 403.003, 403.005, 405.003(a) - (c), 407.103, 407.104(b), 407A.301, and 407A.302.

Insurance Code §201.001(a)(1) states that the Texas Department of Insurance operating account is an account in the general revenue fund, and that the account includes taxes and fees received by the Commissioner or Comptroller that are required by the Insurance Code to be deposited to the credit of the account. Section 201.001(b) provides that the Commissioner administer money in the Texas Department of Insurance operating account and may spend money from the account in accordance with state law, rules adopted by the Commissioner, and the General Appropriations Act. Section 201.001(c) states that money deposited to the credit of the Texas Department of Insurance operating account may be used for any purpose for which money in the account is authorized to be used by law.

Insurance Code §201.052(a) requires the department to reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the Comptroller in administering taxes imposed under the Insurance Code or another insurance law of Texas. Section 201.052(d) provides that in setting maintenance taxes for each fiscal year, the Commissioner ensure that the amount of taxes imposed is sufficient to fully reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the Comptroller in administering taxes imposed under the Insurance Code or another insurance law of Texas. Section 201.052(e) provides that if the amount of maintenance taxes collected is not sufficient to reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the Comptroller, other money in the Texas Department of Insurance operating account be used to reimburse the appropriate portion of the general revenue fund.

Insurance Code §251.001 directs the Commissioner to annually determine the rate of assessment of each maintenance tax imposed under Insurance Code Title 3, Subtitle C.

Insurance Code §252.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §252.003. Insurance Code §252.001 also specifies that the tax required by Insurance Code Chapter 252 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 252.

Insurance Code §252.002 provides that the rate of assessment set by the Commissioner may not exceed 1.25 percent of the gross premiums subject to taxation under Insurance Code §252.003. Section 252.002(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating all classes of insurance specified under: Insurance Code Chapters 1807, 2001 - 2006, 2171, 6001, 6002, and 6003; Chapter 5, Subchapter C; Chapter 544, Subchapter H; Chapter 1806, Subchapter D; and §403.002; Government Code §§417.007, 417.008, and 417.009; and Occupations Code Chapter 2154.

Insurance Code §252.003 specifies that an insurer must pay maintenance taxes under Insurance Code Chapter 252 on the correctly reported gross premiums from writing insurance in Texas against loss or damage by: bombardment; civil war or commotion; cyclone; earthquake; excess or deficiency of moisture; explosion as defined by Insurance Code §2002.006(b); fire; flood; frost and freeze; hail, including loss by hail on farm crops; insurrection; invasion; lightning; military or usurped power; an order of a civil authority made to prevent the spread of a conflagration, epidemic, or catastrophe; rain; riot; the rising of the waters of the ocean or its tributaries; smoke or smudge; strike or lockout; tornado; vandalism or malicious mischief; volcanic eruption; water or other fluid or substance resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes, or other conduits or containers; weather or climatic conditions; windstorm; an event covered under a home warranty insurance policy; or an event covered under an inland marine insurance policy.

Insurance Code §253.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §253.003. Section 253.001 also provides that the tax required by Insurance Code Chapter 253 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 253.

Insurance Code §253.002 provides that the rate of assessment set by the Commissioner may not exceed 0.4 percent of the gross premiums subject to taxation under Insurance Code §253.003. Section 253.002(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating all classes of insurance specified under Insurance Code §253.003.

Insurance Code §253.003 specifies that an insurer must pay maintenance taxes under Insurance Code Chapter 253 on the correctly reported gross premiums from writing a class of insurance specified under Insurance Code Chapters 2008, 2251, and 2252; Chapter 5, Subchapter B; Chapter 1806, Subchapter C; Chapter 2301, Subchapter A; and Title 10, Subtitle B.

Insurance Code §254.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §254.003. Section 254.001 also provides that the tax required by Insurance Code Chapter 254 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 254.

Insurance Code §254.002 provides that the rate of assessment set by the Commissioner may not exceed 0.2 percent of the gross premiums subject to taxation under Insurance Code §254.003. Section 254.002 also provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating motor vehicle insurance.

Insurance Code §254.003 specifies that an insurer must pay maintenance taxes under Insurance Code Chapter 254 on the correctly reported gross premiums from writing motor vehicle insurance in Texas, including personal and commercial automobile insurance.

Insurance Code §255.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §255.003, including a stock insurance company, mutual insurance company, reciprocal or interinsurance exchange, and Lloyd's plan. Section 255.001 also provides that the tax required by Insurance Code Chapter 255 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 255.

Insurance Code §255.002 provides that the rate of assessment set by the Commissioner may not exceed 0.6 percent of the gross premiums subject to taxation under Insurance Code §255.003. Section 255.002(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating workers' compensation insurance.

Insurance Code §255.003 specifies that an insurer must pay maintenance taxes under Insurance Code Chapter 255 on the correctly reported gross premiums from writing workers' compensation insurance in Texas, including the modified annual premium of a policyholder that purchases an optional deductible plan under Insurance Code Chapter 2053, Subchapter E. The section also provides that the rate of assessment be applied to the modified annual premium before application of a deductible premium credit.

Insurance Code §257.001(a) imposes a maintenance tax on each authorized insurer, including a group hospital service corporation, managed care organization, local mutual aid association, statewide mutual assessment company, stipulated premium company, and stock or mutual insurance company, that collects from residents of this state gross premiums or gross considerations subject to taxation under Insurance Code §257.003. Section 257.001(a) also provides that the tax required by Chapter 257 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 257.

Insurance Code §257.002 provides that the rate of assessment set by the Commissioner may not exceed 0.04 percent of the gross premiums subject to taxation under Insurance Code §257.003. Section 257.002(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating life, health, and accident insurers.

Insurance Code §257.003 specifies that an insurer must pay maintenance taxes under Insurance Code Chapter 257 on the correctly reported gross premiums collected from writing life, health, and accident insurance in Texas, as well as gross considerations collected from writing annuity or endowment contracts in Texas. The section also provides that gross premiums on which an assessment is based under Insurance Code Chapter 257 may not include premiums received from the United States for insurance contracted for by the United States in accordance with or in furtherance of Title XVIII of the Social Security Act (42 U.S.C. §§1395c et seq.) and its subsequent amendments; or premiums paid on group health, accident, and life policies in which the group covered by the policy consists of a single nonprofit trust established to provide coverage primarily for employees of a municipality, county, or hospital district in this state; or a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or of an entity operating the hospital on behalf of the county or municipality.

Insurance Code §258.002 imposes a per capita maintenance tax on each authorized HMO with gross revenues subject to taxation under Insurance Code §258.004. Section 258.002 also provides that the tax required by Insurance Code Chapter 258 is in addition to other taxes that are not in conflict with Insurance Code Chapter 258.

Insurance Code §258.003 provides that the rate of assessment set by the Commissioner on HMOs may not exceed $2 per enrollee. Section 258.003 also provides that the Commissioner annually adjust the rate of assessment of the per capita maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating HMOs. Section 258.003 also provides that rate of assessment may differ between basic health care plans, limited health care service plans, and single health care service plans and must equitably reflect any differences in regulatory resources attributable to each type of plan.

Insurance Code §258.004 provides that an HMO must pay per capita maintenance taxes under Insurance Code Chapter 258 on the correctly reported gross revenues collected from issuing health maintenance certificates or contracts in Texas. Section 258.004 also provides that the amount of maintenance tax assessed may not be computed based on enrollees who, as individual certificate holders or their dependents, are covered by a master group policy paid for by revenues received from the United States for insurance contracted for by the United States in accord with or in furtherance of Title XVIII of the Social Security Act (42 U.S.C. §§1395c et seq.) and its subsequent amendments; revenues paid on group health, accident, and life certificates or contracts in which the group covered by the certificate or contract consists of a single nonprofit trust established to provide coverage primarily for employees of a municipality, county, or hospital district in this state; or a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or of an entity operating the hospital on behalf of the county or municipality.

Insurance Code §259.002 imposes a maintenance tax on each authorized third party administrator with administrative or service fees subject to taxation under Insurance Code §259.004. Section 259.002 also provides that the tax required by Insurance Code Chapter 259 is in addition to other taxes imposed that are not in conflict with the chapter.

Insurance Code §259.003 provides that the rate of assessment set by the Commissioner may not exceed 1 percent of the administrative or service fees subject to taxation under Insurance Code §259.004. Section 259.003(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses of regulating third party administrators.

Insurance Code §259.004 requires a third party administrator to pay maintenance taxes under Chapter 259 on the administrator's correctly reported administrative or service fees.

Insurance Code §260.001 imposes a maintenance tax on each nonprofit legal services corporation subject to Insurance Code Chapter 961 with gross revenues subject to taxation under Insurance Code §260.003. Section 260.001 also provides that the tax required by Insurance Code Chapter 260 is in addition to other taxes imposed that are not in conflict with the chapter.

Insurance Code §260.002 provides that the rate of assessment set by the Commissioner may not exceed 1 percent of the corporation's gross revenues subject to taxation under Insurance Code §260.003. Section 260.002 also provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating nonprofit legal services corporations.

Insurance Code §260.003 provides that a nonprofit legal services corporation must pay maintenance taxes under the chapter on the correctly reported gross revenues received from issuing prepaid legal services contracts in this state.

Insurance Code §271.002 imposes a maintenance fee on all premiums subject to assessment under Insurance Code §271.006. Section 271.002 also specifies that the maintenance fee is not a tax and must be reported and paid separately from premium and retaliatory taxes.

Insurance Code §271.003 specifies that the maintenance fee is included in the division of premiums and may not be separately charged to a title insurance agent.

Insurance Code §271.004 provides that the Commissioner annually determine the rate of assessment of the title insurance maintenance fee. Section 271.004(b) provides that in determining the rate of assessment, the Commissioner consider the requirement to reimburse the appropriate portion of the general revenue fund under Insurance Code §201.052.

Insurance Code §271.005 provides that the rate of assessment set by the Commissioner may not exceed 1 percent of the gross premiums subject to assessment under Insurance Code §271.006. Section 271.005(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance fee so that the fee imposed that year, together with any unexpended funds produced by the fee, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating title insurance.

Insurance Code §271.006 requires an insurer to pay maintenance fees under Chapter 271 on the correctly reported gross premiums from writing title insurance in Texas.

Insurance Code §964.068 provides that a captive insurance company is subject to maintenance tax under Insurance Code, Title 3, Subtitle C, on the correctly reported gross premiums from writing insurance on risks located in this state as applicable to the individual lines of business written by the captive insurance company.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

Labor Code §403.002 imposes an annual maintenance tax on each insurance carrier to pay the costs of administering the Texas Workers' Compensation Act and to support the prosecution of workers' compensation insurance fraud in Texas. Labor Code §403.002 also provides that the assessment may not exceed an amount equal to 2 percent of the correctly reported gross workers' compensation insurance premiums, including the modified annual premium of a policyholder that purchases an optional deductible plan under Insurance Code Article 5.55C, which was recodified as Insurance Code §2053.202 by House Bill 2017, 79th Legislature, Regular Session (2005). Labor Code §403.002 also provides that the rate of assessment be applied to the modified annual premium before application of a deductible premium credit. Additionally, Labor Code §403.002 states that a workers' compensation insurance company is taxed at the rate established under Labor Code §403.003, and that the tax be collected in the manner provided for collection of other taxes on gross premiums from a workers' compensation insurance company as provided in Insurance Code Chapter 255. Finally, Labor Code §403.002 states that each certified self-insurer must pay a fee and maintenance taxes as provided by Labor Code Chapter 407, Subchapter F.

Labor Code §403.003 requires the Commissioner of Insurance to set and certify to the Comptroller the rate of maintenance tax assessment, taking into account: (i) any expenditure projected as necessary for DWC and OIEC to administer the Texas Workers' Compensation Act during the fiscal year for which the rate of assessment is set and reimburse the general revenue fund as provided by Insurance Code §201.052; (ii) projected employee benefits paid from general revenues; (iii) a surplus or deficit produced by the tax in the preceding year; (iv) revenue recovered from other sources, including reappropriated receipts, grants, payments, fees, and gifts recovered under the Texas Workers' Compensation Act; and (v) expenditures projected as necessary to support the prosecution of workers' compensation insurance fraud. Labor Code §403.003 also provides that in setting the rate of assessment, the Commissioner of Insurance may not consider revenue or expenditures related to the State Office of Risk Management, the workers' compensation research functions of the department under Labor Code Chapter 405, or any other revenue or expenditure excluded from consideration by law.

Labor Code §403.005 provides that the Commissioner of Insurance must annually adjust the rate of assessment of the maintenance tax imposed under §403.003 so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner of Insurance determines is necessary to pay the expenses of administering the Texas Workers' Compensation Act. Labor Code §405.003(a) - (c) establishes a maintenance tax on insurance carriers and self-insurance groups to fund the Workers' Compensation Research and Evaluation Group, it provides for the department to set the rate of the maintenance tax based on the expenditures authorized and the receipts anticipated in legislative appropriations, and it provides that the tax is in addition to all other taxes imposed on insurance carriers for workers' compensation purposes.

Labor Code §407.103 imposes a maintenance tax on each workers' compensation certified self-insurer for the administration of the DWC and OIEC and to support the prosecution of workers' compensation insurance fraud in Texas. Labor Code §407.103 also provides that not more than 2 percent of the total tax base of all certified self-insurers, as computed under subsection (b) of the section, may be assessed for the maintenance tax estab-

lished under Labor Code §407.103. Labor Code §407.103 also provides that to determine the tax base of a certified self-insurer for purposes of Labor Code Chapter 407, the department multiply the amount of the certified self-insurer's liabilities for workers' compensation claims incurred in the previous year, including claims incurred but not reported, plus the amount of expense incurred by the certified self-insurer in the previous year for administration of self-insurance, including legal costs, by 1.02. Labor Code §407.103 also provides that the tax liability of a certified self-insurer under the section is the tax base computed under subsection (b) of the section multiplied by the rate assessed workers' compensation insurance companies under Labor Code §403.002 and §403.003. Finally, Labor Code §407.103 provides that in setting the rate of maintenance tax assessment for insurance companies, the Commissioner of Insurance may not consider revenue or expenditures related to the operation of the self-insurer program under Labor Code Chapter 407.

Labor Code §407.104(b) provides that the department compute the fee and taxes of a certified self-insurer and notify the certified self-insurer of the amounts due. Section 407.104(b) also provides that a certified self-insurer must remit the taxes and fees to DWC.

Labor Code §407A.301 imposes a self-insurance group maintenance tax on each workers' compensation self-insurance group based on gross premium for the group's retention.

Labor Code §407A.301 provides that the self-insurance group maintenance tax is to pay for the administration of DWC, the prosecution of workers' compensation insurance fraud in Texas, the research functions of the department under Labor Code Chapter 405, and the administration of OIEC under Labor Code Chapter 404. Labor Code §407A.301 also provides that the tax liability of a group under subsection (a)(1) and (2) of the section is based on gross premium for the group's retention multiplied by the rate assessed insurance carriers under Labor Code §403.002 and §403.003. Labor Code §407A.301 also provides that the tax liability of a group under subsection (a)(3) of the section is based on gross premium for the group's retention multiplied by the rate assessed insurance carriers under Labor Code §405.003. Additionally, Labor Code §407A.301 provides that the tax under the section does not apply to premium collected by the group for excess insurance. Finally, Labor Code §407A.301(e) provides that the tax under the section be collected by the Comptroller as provided by Insurance Code Chapter 255 and Insurance Code §201.051.

Labor Code §407A.302 requires each workers' compensation self-insurance group to pay the maintenance tax imposed under Insurance Code Chapter 255, for the administrative costs incurred by the department in implementing Labor Code Chapter 407A. Labor Code §407A.302 provides that the tax liability of a workers' compensation self-insurance group under the section is based on gross premium for the group's retention and does not include premium collected by the group for excess insurance. Labor Code §407A.302 also provides that the maintenance tax assessed under the section is subject to Insurance Code Chapter 255, and that it be collected by the Comptroller in the manner provided by Insurance Code Chapter 255.

CROSS REFERENCE TO STATUTE. Amendments in this proposal to §1.414 affect Insurance Code §§201.001(a)(1), (b), and (c); 201.052(a), (d), and (e); 251.001, 252.001 - 252.003; 253.001 - 253.003; 254.001 - 254.003; 255.001 - 255.003; 257.001 - 257.003; 258.002 - 258.004; 259.002 - 259.004; 260.001 - 260.003; and 271.002 - 271.006; and Labor Code §§403.002, 403.003, 403.005, 405.003(a) - (c), 407.103, 407.104(b), 407A.301, and 407A.302.

§1.414. Assessment of Maintenance Taxes and Fees, 2019 [~~2018~~].

(a) The department assesses the following rates for maintenance taxes and fees on gross premiums of insurers for calendar year 2018 [~~2017~~] for the lines of insurance specified in paragraphs (1) - (9) of this subsection:

(1) for motor vehicle insurance, under Insurance Code §254.002, the rate is .049 [~~.052~~] of 1 percent;

(2) for casualty insurance and fidelity, guaranty, and surety bonds, under Insurance Code §253.002, the rate is .053 [~~.071~~] of 1 percent;

(3) for fire insurance and allied lines, including inland marine, under Insurance Code §252.002, the rate is .303 [~~.345~~] of 1 percent;

(4) for workers' compensation insurance, under Insurance Code §255.002, the rate is .069 of 1 percent;

(5) for workers' compensation insurance, under Labor Code §403.003, the rate is 2.0 percent;

(6) for workers' compensation insurance, under Labor Code §405.003, the rate is .034 [~~.054~~] of 1 percent;

(7) for workers' compensation insurance, under Labor Code §407A.301, the rate is 2.0 percent;

(8) for workers' compensation insurance, under Labor Code §407A.302, the rate is .069 of 1 percent; and

(9) for title insurance, under Insurance Code §271.004, the rate is .078 [~~.090~~] of 1 percent.

(b) The rate for the maintenance tax to be assessed on gross premiums for calendar year 2018 [~~2017~~] for life, health, and accident insurance and the gross considerations for annuity and endowment contracts, under Insurance Code §257.002, is .040 of 1 percent.

(c) The department assesses rates for maintenance taxes for calendar year 2018 [~~2017~~] for the following entities as follows:

(1) under Insurance Code §258.003, the rate is $.24 per enrollee for single service health maintenance organizations, $.72 per enrollee for multiservice health maintenance organizations, and $.24 per enrollee for limited service health maintenance organizations;

(2) under Insurance Code §259.003, the rate is .008 [~~.011~~] of 1 percent of the correctly reported gross amount of administrative or service fees for third party administrators; and

(3) under Insurance Code §260.002, the rate is .010 [~~.011~~] of 1 percent of the correctly reported gross revenues for nonprofit legal services corporations issuing prepaid legal services contracts.

(d) Under Labor Code §405.003, each certified self-insurer must pay a maintenance tax for the Workers' Compensation Research and Evaluation Group in calendar year 2019 [~~2018~~] at a rate of .034 [~~.054~~] of 1 percent of the tax base calculated under Labor Code §407.103(b) which must be billed to the certified self-insurer by the Division of Workers' Compensation.

(e) Under Labor Code §405.003 and §407A.301, each workers' compensation self-insurance group must pay a maintenance tax for the Workers' Compensation Research and Evaluation Group in calendar year 2019 [~~2018~~] at a rate of .034 [~~.054~~] of 1 percent of the tax base calculated under Labor Code §407.103(b).

(f) Under Labor Code §407.103 and §407.104, each certified self-insurer must pay a self-insurer maintenance tax in calendar year 2019 [~~2018~~] at a rate of 2.0 percent of the tax base calculated under Labor Code §407.103(b) which must be billed to the certified self-insurer by the Division of Workers' Compensation.

(g) The enactment of Senate Bill 14, 78th Legislature, Regular Session (2003), relating to certain insurance rates, forms, and practices, did not affect the calculation of the maintenance tax rates or the assessment of the taxes.

(h) The taxes assessed under subsections (a), (b), (c), and (e) of this section will be payable and due to the Comptroller of Public Accounts on March 1, 2019 [~~2018~~].

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

Filed with the Office of the Secretary of State on October 26, 2018.

TRD-201804686
Norma Garcia
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: December 9, 2018
For further information, please call: (512) 676-6584

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CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER J. EXAMINATION EXPENSES AND ASSESSMENTS

28 TAC §7.1001

The Texas Department of Insurance proposes amendments to 28 TAC §7.1001, concerning assessments to cover the expenses of examining domestic and foreign insurance companies and self-insurance groups providing workers' compensation insurance. Under Insurance Code §843.156, the term "insurance company" as used in this proposal includes a health maintenance organization (HMO) as defined in Insurance Code §843.002.

EXPLANATION. The proposed amendments are necessary to establish the examination expenses to be levied against and collected from each domestic and foreign insurance company and each self-insurance group providing workers' compensation insurance examined during the 2019 calendar year. The proposed amendments are also necessary to establish the rates of assessment to be levied against and collected from each domestic insurer, based on admitted assets and gross premium receipts for the 2018 calendar year, and from each foreign insurer examined during the 2018 calendar year using the same methodology.

The department proposes an amendment to the section heading to reflect the year for which the proposed assessment will be applicable. The department also proposes amendments in subsections (b)(1) and (2), (c)(1), (c)(2)(A) and (B), (c)(3), and (d) to reflect the appropriate year for accurate application of the section.

The department proposes amendments in subsection (c)(2)(A) and (B) to update assessments to reflect the methodology the department has developed for 2019.

The following paragraphs provide an explanation of the methodology used to determine examination overhead assessments for 2019.

In general, the department's 2019 revenue need (the amount that must be funded by maintenance taxes or fees; examination overhead assessments; premium finance exam assessments; and funds in the self-directed budget account, as established under Insurance Code §401.252) is determined by calculating the department's total cost need, and subtracting from that number funds resulting from fee revenue and funds remaining from fiscal year 2018.

To determine total cost need, the department combined costs from the following: (i) appropriations set out in Chapter 605 (Senate Bill 1), Acts of the 85th Legislature, Regular Session, (2017) (the General Appropriations Act), which come from two funds, the General Revenue Dedicated - Texas Department of Insurance Operating Account No. 0036 (Account No. 0036) and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) funds allowed by Insurance Code Subchapters D and F of Chapter 401 as approved by the Commissioner of Insurance for the self-directed budget account in the Treasury Safekeeping Trust Company to be used exclusively to pay examination costs associated with salary, travel, or other personnel expenses and administrative support costs; (iii) an estimate of other costs statutorily required to be paid from those two funds and the self-directed budget account, such as fringe benefits and statewide allocated costs; and (iv) an estimate of the cash amount necessary to finance both funds and the self-directed budget account from the end of the 2019 fiscal year until the next assessment collection period in 2020. From these combined costs, the department subtracted costs allocated to the Division of Workers' Compensation and the Workers' Compensation Research and Evaluation Group.

The department determined how to allocate the revenue need to be attributed to each funding source using the following method:

Each section within the department that provides services directly to the public or the insurance industry allocated the costs for providing those direct services on a percentage basis to each funding source, such as the maintenance tax or fee line, the premium finance assessment, the examination assessment, the self-directed budget account as limited by Insurance Code §401.252, or another funding source. The department applied these percentages to each section's annual budget to determine the total direct cost to each funding source. The department calculated a percentage for each funding source by dividing the total directly allocated to each funding source by the total of the direct cost. The department used this percentage to allocate administrative support costs to each funding source. Examples of administrative support costs include services provided by human resources, accounting, budget, the Commissioner's administration, and information technology. The department calculated the total of direct costs and administrative support costs for each funding source.

To complete the calculation of the revenue need, the department combined the costs allocated to the examination overhead assessment source and the self-directed budget account source. The department then subtracted the fiscal year 2019 estimated amount of examination direct billing revenue from the amount of

the combined costs of the examination overhead assessment source and the self-directed budget account source. The resulting balance is the amount of the examination revenue need for the purpose of calculating the examination overhead assessment rates.

To calculate the assessment rates, the department allocated 50 percent of the revenue need to admitted assets and 50 percent to gross premium receipts. The department divided the revenue need for gross premium receipts by the total estimated gross premium receipts for calendar year 2018 to determine the proposed rate of assessment for gross premium receipts. The department divided the revenue need for admitted assets by the total estimated admitted assets for calendar year 2018 to determine the proposed rate of assessment for admitted assets.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Joe Meyer, assistant director of Financial Services, has determined that for each year of the first five years the proposed amendments will be in effect, the expected fiscal impact on state government is estimated income of $14,792,197 to the Texas Department of Insurance Examination Self-Directed Account in the Texas Treasury Safekeeping Trust Company. There will be no fiscal implications for local government as a result of enforcing or administering the section, because local governments are not involved in enforcing or complying with the proposed amendments, and there will be no effect on local employment or the local economy.

PUBLIC BENEFIT AND COST NOTE. Mr. Meyer also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit expected as a result of enforcing the section will be adequate and reasonable assessment rates to defray the state's expenses of domestic and foreign insurer examinations and administration of the laws related to these examinations during the 2019 calendar year. Mr. Meyer has determined that the direct economic cost to entities required to comply with the proposed amendments will vary.

The examination expense will consist of the actual salary of the examiner directly attributable to the examination and the actual expenses of the examiner directly attributable to the examination, including transportation, lodging, meals, subsistence expenses, and parking fees. The actual salary of an examiner is to be determined by dividing the annual salary of the examiner by the total number of working days in a year, and a company or group is to be assessed the part of the annual salary attributable to each working day the examiner examines the company or group.

The amount of the assessment in 2019 for every domestic insurer and those foreign insurers examined in 2018 will be .00173 of 1 percent of the company's admitted assets as of December 31, 2018, excluding pension assets specified in subsection (c)(2)(A), and .00580 of 1 percent of the company's gross premium receipts for 2018, excluding pension related premiums specified in subsection (c)(2)(B), and premiums related to welfare benefits described in subsection (c)(6).

There are two components of costs for entities required to comply with the assessment requirements in the proposal: the cost to gather the information, calculate the assessment, and complete the required forms; and the cost of the assessment. Typically, a person familiar with the accounting records of the company and accounting practices in general will perform the activities necessary to comply with the section. The compensation is generally between $26 and $44 an hour. The department estimates that the required form can be completed in two hours. The requirement to pay the assessment necessary to cover the expenses of company examination is the result of legislative enactment and is not a result of the adoption or enforcement of this proposal. For those domestic and foreign companies with an overhead assessment of less than $25 as computed under §7.1001(c)(2)(A) and (B), a minimum overhead assessment of $25 will be assessed.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code §2006.002(c), the department has determined that the proposal may have an adverse economic effect on approximately 18 domestic insurance companies that are small or micro businesses required to comply with the proposed rules. It is not possible to anticipate the number or size of foreign insurance companies that may be required to comply with the proposed rule, because of the limited number of examinations the department conducts on foreign insurance companies. The department has determined that none of the workers' compensation self-insurance groups that must comply with the proposed rule would qualify as a small or micro business.

Adverse economic impact may result from costs associated with examination fees and the amount of the required assessment resulting from this proposal. The cost of compliance will not vary between large businesses and small or micro businesses, and the department's cost analysis and resulting estimated costs in the public benefit or cost note portion of this proposal is equally applicable to small or micro businesses. The total cost of compliance to large businesses and small or micro businesses is not dependent on the size of the business, but rather is dependent on: for workers' compensation self-insurance groups, the length of time it takes to conduct an examination, the annual salary of the examiner, and expenses associated with the examination; and for domestic and foreign insurers, the length of time it takes to conduct an examination, expenses associated with the examination, and the admitted assets and gross premium receipts of the company.

In accordance with Government Code §2006.002(c-1), the department has considered other regulatory methods to accomplish the objectives of the proposal that will also minimize any adverse impact on small and micro businesses.

The primary objective of the proposal is to propose a rule addressing examination fees and assessments for domestic and foreign insurance companies and workers' compensation self-insurance groups.

The other regulatory methods considered by the department to accomplish the objectives of the proposal and to minimize any adverse impact on small and micro businesses include: (i) not adopting the proposed rule, (ii) adopting a different assessment requirement for small and micro businesses, and (iii) exempting small or micro businesses from the assessment requirements.

Not adopting the proposed rule. Without adopting the proposed rule the department would be unable to collect the necessary funds to cover the examination functions of the department. The purpose of conducting examinations is to monitor the activities and solvency of insurance companies. Failure by the department to perform its examination functions could result in public harm if a company does not comply with the Insurance Code or becomes insolvent and this is not detected because of the lack of regular examinations. Not adopting the rule would also result in the department being out of compliance with Insurance Code §401.151(c) and §401.152(a-1), which direct the department to

impose an annual assessment on domestic and foreign insurers in an amount sufficient to meet all other expenses and disbursements necessary to comply with the insurer examination laws of Texas. This option has been rejected.

Adopting a different assessment requirement for small and micro businesses. The proposed assessment is already based on the most equitable methodology the department can develop. The department applies an assessment methodology that results in a smaller assessment, down to a minimum assessment of $25, for domestic and foreign insurer small or micro businesses because the assessment is determined based on premium levels and admitted assets. The department anticipates that a domestic or foreign insurer that is a small or micro business most susceptible to economic harm would be one that writes fewer premiums and has fewer admitted assets. However, based on the proposed assessment requirements of the rule, that small or micro business would pay a smaller assessment, reducing its risk of economic harm. This option has been rejected.

Exempting small or micro businesses from the assessment requirements. As previously noted, the current methodology used to develop the proposed rule is already the most equitable that the department can develop. The department applies a methodology that contemplates a domestic or foreign insurer that is a small or micro business paying less of an assessment if it writes fewer premiums or has less admitted assets. However, if the assessment were completely eliminated for small or micro businesses, the department would need to completely revise its calculations to shift costs to other insurers and entities, which would result in a less balanced methodology. This option has been rejected.

The department, after considering the purpose of the authorizing statutes, does not believe it is legal or feasible to waive or modify the requirements of the proposal for small and micro businesses.

The department has determined that the proposal will not have an adverse economic effect on rural communities because examinations are not conducted on rural communities and rural communities do not pay assessments to cover examination expenses. As a result, and in accordance with Government Code §2006.002(c), it is not necessary for the department to address rural communities in its regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. The department has determined that the proposed amendments do impose a possible cost on regulated persons. However, no additional rule amendments or repeals are required under Government Code §2001.0045 because the proposed amendments are necessary to implement legislation. Insurance Code §§201.001(a)(1), (b), and (c); 401.151; 401.152; 401.155; 401.156; and 843.156(h); and Labor Code §407A.252(b), direct the department to levy assessments on domestic and foreign insurers to cover examination expenses and the proposed amendments are necessary to comply with this requirement.

GOVERNMENT GROWTH IMPACT STATEMENT. During the first five years that the proposed rule would be in effect, the proposed rule or its implementation:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will require increases in fees paid to the agency;

- will not create new regulation;

- will not expand, limit, or repeal existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Submit any written comments on the proposal no later than 5:00 p.m., Central time, on December 10, 2018, by mail to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104; or by email to chiefclerk@tdi.texas.gov. Separately, submit any request for a public hearing to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, before the close of the public comment period. If the department holds a hearing, the department will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. The amended section is proposed under Insurance Code §§201.001(a)(1), (b), and (c); 401.151; 401.152; 401.155, 401.156; 843.156(h); and 36.001; and Labor Code §407A.252(b).

Insurance Code §201.001(a)(1) states that the Texas Department of Insurance operating account is an account in the general revenue fund, and that the account includes taxes and fees received by the Commissioner or Comptroller that are required by the Insurance Code to be deposited to the credit of the account. Section 201.001(b) states that the Commissioner administers money in the Texas Department of Insurance operating account and may spend money from the account in accordance with state law, rules adopted by the Commissioner, and the General Appropriations Act. Section 201.001(c) states that money deposited to the credit of the Texas Department of Insurance operating account may be used for any purpose for which money in the account is authorized to be used by law.

Insurance Code §401.151 provides that a domestic insurer examined by the department or under the department's authority must pay the expenses of the examination in an amount the Commissioner certifies as just and reasonable. Insurance Code §401.151 also provides that the department collect an assessment at the time of the examination to cover all expenses attributable directly to that examination, including the salaries and expenses of department employees and expenses described by Insurance Code §803.007. Section 401.151 also requires that the department impose an annual assessment on domestic insurers in an amount sufficient to meet all other expenses and disbursements necessary to comply with the laws of Texas relating to the examination of insurers. Additionally, §401.151 states that in determining the amount of assessment, the department consider the insurer's annual premium receipts or admitted assets, or both, that are not attributable to 90 percent of pension plan contracts as defined by §818(a), Internal Revenue Code of 1986; or the total amount of the insurer's insurance in force.

Insurance Code §401.152 provides that an insurer not organized under the laws of Texas must reimburse the department for the salary and expenses of each examiner participating in an examination of the insurer and for other department expenses that are properly allocable to the department's participation in the examination. Section 401.152(a-1) requires that the department also impose an annual assessment on insurers not organized under the laws of this state subject to examination as described by the section in an amount sufficient to meet all other expenses and disbursements necessary to comply with the laws of this state relating to the examination of insurers, and the amount imposed must be computed in the same manner as the amount imposed under §401.151(c) for domestic insurers. Section 401.152 also requires an insurer to pay the expenses under the section directly to the department on presentation of an itemized written statement from the Commissioner. Additionally, §401.152 provides that the Commissioner determine the salary of an examiner participating in an examination of an insurer's books or records located in another state based on the salary rate recommended by the National Association of Insurance Commissioners or the examiner's regular salary rate.

Insurance Code §401.155 requires the department to impose additional assessments against insurers on a pro rata basis as necessary to cover all expenses and disbursements required by law and to comply with Insurance Code Chapter 401, Subchapter D, and §§401.103, 401.104, 401.105, and 401.106.

Insurance Code §401.156 requires the department to deposit any assessments or fees collected under Insurance Code Chapter 401, Subchapter D, relating to the examination of insurers and other regulated entities by the financial examinations division or actuarial division, as those terms are defined by Insurance Code §401.251, to the credit of an account with the Texas Treasury Safekeeping Trust Company to be used exclusively to pay examination costs as defined by Insurance Code §401.251, to reimburse the Texas Department of Insurance operating account for administrative support costs, and for premium tax credits for examination costs and examination overhead assessments. Additionally, §401.156 provides that revenue not related to the examination of insurers or other regulated entities by the financial examinations division or actuarial division be deposited to the credit of the Texas Department of Insurance operating account.

Insurance Code §843.156(h) provides that Insurance Code Chapter 401, Subchapter D, applies to an HMO, except to the extent that the Commissioner determines that the nature of the examination of an HMO renders the applicability of those provisions clearly inappropriate.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of Texas.

Labor Code §407A.252(b) provides that the Commissioner of Insurance may recover the expenses of an examination of a workers' compensation self-insurance group under Insurance Code Article 1.16, which was recodified as Insurance Code §§401.151, 401.152, 401.155, and 401.156 by House Bill 2017, 79th Legislature, Regular Session (2005), to the extent the maintenance tax under Labor Code §407A.302 does not cover those expenses.

CROSS REFERENCE TO STATUTE. Amendments in this proposal to §7.1001 affect Insurance Code §§201.001(a)(1), (b), and (c); 401.151; 401.152; 401.155; 401.156; and 843.156(h); and Labor Code §407A.252(b).

§7.1001. Examination Assessments for Domestic and Foreign Insurance Companies and Self-Insurance Groups Providing Workers' Compensation Insurance, 2019 [~~2018~~].

(a) Under Insurance Code §843.156 and for purposes of this section, the term "insurance company" includes a health maintenance organization as defined in Insurance Code §843.002.

(b) An insurer not organized under the laws of Texas (foreign insurance company) must pay the costs of an examination as specified in this subsection.

(1) Under Insurance Code §401.152, a foreign insurance company must reimburse the department for the salary and examination expenses of each examiner participating in an examination of the insurance company allocable to an examination of the company. To determine the allocable salary for each examiner, the department divides the annual salary of each examiner by the total number of working days in a year. The department assesses the company the part of the annual salary attributable to each working day the examiner examines the company during 2019 [~~2018~~]. The expenses the department assesses are those actually incurred by the examiner to the extent permitted by law.

(2) Under Insurance Code §401.152(a-1), a foreign insurance company examined in 2018 [~~2017~~] entirely, or an exam beginning in 2018 [~~2017~~] and completed in 2019 [~~2018~~], must pay an annual assessment in an amount sufficient to meet all other expenses and disbursements necessary to comply with the laws of this state relating to the examination of insurers. The amount imposed must be computed in the same manner as the amount imposed for domestic insurers as applicable under subsection (c) of this section.

(3) A foreign insurance company must pay the reimbursements and payments required by this subsection to the department as specified in each itemized bill the department provides to the foreign insurance company.

(c) Under Insurance Code §401.151, §401.155, and Chapter 803, a domestic insurance company must pay examination expenses and rates of overhead assessment in accordance with this subsection.

(1) A domestic insurance company must pay the actual salaries and expenses of the examiners allocable to an examination of the company. The annual salary of each examiner is to be divided by the total number of working days in a year, and the company is to be assessed the part of the annual salary attributable to each working day the examiner examines the company during 2019 [~~2018~~]. The expenses assessed must be those actually incurred by the examiner to the extent permitted by law.

(2) Except as provided in paragraphs (3) and (4) of this subsection, the overhead assessment to cover administrative departmental expenses attributable to examination of companies is:

(A) .00173 [~~.00104~~] of 1 percent of the admitted assets of the company as of December 31, 2018 [~~2017~~], taking into consideration the annual admitted assets that are not attributable to 90 percent of pension plan contracts as defined in §818(a) of the Internal Revenue Code of 1986 (26 U.S.C. §818(a)); and

(B) .00580 [~~.00405~~] of 1 percent of the gross premium receipts of the company for the year 2018 [~~2017~~], taking into consideration the annual premium receipts that are not attributable to 90 percent of pension plan contracts as defined in §818(a) of the Internal Revenue Code of 1986 (26 U.S.C. §818(a)).

(3) Except as provided in paragraph (4) of this subsection, if a company was a domestic insurance company for less than a full year during calendar year 2018 [~~2017~~] because of a redomestication, the overhead assessment for the company is the overhead assessment required under paragraph (2)(A) and (B) of this subsection divided by 365 and multiplied by the number of days the company was a domestic insurance company during calendar year 2018 [~~2017~~].

(4) If the overhead assessment required under paragraph (2)(A) and (B) of this subsection or paragraph (3) of this subsection produces an overhead assessment of less than $25, a domestic insurance company must pay a minimum overhead assessment of $25.

(5) The department will base the overhead assessments on the assets and premium receipts reported in the annual statements.

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

(d) Under Labor Code §407A.252, a workers' compensation self-insurance group must pay the actual salaries and expenses of the examiners allocable to an examination of the group. To determine the allocable salary for each examiner, the department divides the annual salary of each examiner by the total number of working days in a year. The department assesses the group the part of the annual salary attributable to each working day the examiner examines the company during 2019 [~~2018~~]. The expenses the department assesses are those actually incurred by the examiner to the extent permitted by law.

(e) A domestic insurance company must pay the overhead assessment required under subsection (c) of this section to the Texas Department of Insurance at the address provided on the invoice not later than 30 days from the invoice date.

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

Filed with the Office of the Secretary of State on October 26, 2018.

TRD-201804687
Norma Garcia
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: December 9, 2018
For further information, please call: (512) 676-6584

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PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 148. HEARINGS CONDUCTED BY THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

28 TAC §148.17

The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes amendments to 28 Texas Administrative Code §148.17, Special Provisions for Administrative Penalties. These amendments will align the rule with changes made to Texas Labor Code §415.035, Judicial Review, by House Bill (HB) 1456, 85th Legislature, Regular Session (2017). HB 1456 deleted the requirement that, when an administrative penalty is assessed, a person must pay the penalty or post a bond while seeking judicial review of the administrative decision.

DWC proposes to delete much of the existing text of §148.17 and to replace it with language requiring that, unless otherwise stated in an order from the Commissioner of Workers' Compensation or a court, a charged party must comply with a sanction within 30 days of the order becoming final and unappealable. The rule is also amended to allow for other forms of monetary payments approved by DWC. DWC also proposes to retitle the section and otherwise makes editorial changes to reformat and renumber the rule.

Marisa Lopez Wagley, associate commissioner for Enforcement, has determined that for each year of the first five years the amended rule will be in effect, there will be no fiscal impact to state and local governments as a result of enforcement or administration of the proposed amendment. There will be no measurable effect on local employment or the local economy due to the proposal. The amendments to §148.17 reflect the statutory changes made to Labor Code §415.035 by HB 1456 and do not impose any additional requirements that would cause a fiscal impact as a result of the rules.

Ms. Wagley has determined that for each year of the first five years the amendments are in effect the public will benefit from the rule being aligned with the statute and by not having to pay an administrative penalty or post a bond while pursuing judicial review. HB 1456 reduced the costs to persons seeking judicial review by removing the requirement that they pay a penalty or post a bond while seeking judicial review. No public costs are anticipated.

For the first five years the amendments are in effect, DWC does not anticipate that there will be any cost to persons due to these amendments. As these amendments will not impose any costs, DWC is in compliance with Texas Government Code §2001.0045.

There will be no measurable effect on local employment or local economies as a result of the proposed amendments. The proposal reflects the statutory changes made by HB 1456 to Labor Code §415.035 and does not impose any additional requirements that would cause a fiscal impact as a result of the amendments.

Government Code §2006.002(c) provides that if a proposed rule may have an adverse economic effect on small businesses, micro businesses, or rural communities, state agencies must prepare as part of the rulemaking process a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. DWC has determined that the proposed rule will not have an adverse economic effect on small or microbusinesses or on rural communities. Therefore, a regulatory flexibility analysis is not required.

DWC has found that, during the first five years the proposed amendments will be in effect, they will neither:

--create or eliminate a government program,

--require the creation of new employee positions or result in the elimination of existing positions,

--require an increase or decrease in future legislative appropriations,

--create a new regulation,

--increase nor decrease the number of individuals subject to the rule, nor

--have either a positive or negative impact on the state economy.

The proposed amendments will effectively result in a decrease in fees as parties will no longer be required to pay a penalty or post a bond while pursuing judicial review. As required by HB 1456, the amendments will repeal the existing regulation that required that a person must pay an administrative penalty or post a bond while seeking judicial review.

DWC has determined that no private real property interests will be affected by these amendments and that these amendments will not restrict or limit an owner's right to property that would otherwise exist in the absence of government. Therefore, a takings impact assessment under Government Code §2007.043 is not required.

If you would like to comment on the proposed amendments or request a public hearing, please submit your written comments or hearing request by 5:00 p.m. CST on December 10, 2018. Written comments or a hearing request may be submitted by email to Rulecomments@tdi.texas.gov or by mail to Ashley Hyten, Texas Department of Insurance, Division of Workers' Compensation, Office of Workers' Compensation Counsel, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. If a hearing is held, DWC will consider written comments and public testimony presented at the hearing.

The amendments are proposed under Labor Code §§402.00111, 402.00128. 402.061, and 415.035. Section §402.00111, Relationship Between Commissioner of Insurance and Commissioner of Workers' Compensation Division, provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code. Section 402.00128, General Powers and Duties of Commissioner, authorizes the commissioner to conduct the daily operations of DWC and otherwise implement division policy. Section 402.061, Adoption of Rules, provides that the commissioner of workers' compensation shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act. Section 415.035, Judicial Review, provides for judicial review of decisions under §415.034, relating to hearing procedures.

The proposed amendments support the implementation of the Texas Workers' Compensation Act, Texas Labor Code Title 5, Subtitle A.

§148.17. Special Provisions for Sanctions [~~Administrative Penalties~~].

(a) Unless otherwise stated in an order from the commissioner or a court, a charged party must comply with a sanction no [~~Required Response to Assessment of Sanctions. Not~~] later than the 30th day after the order becomes final and unappealable.

(b) If an order imposing a sanction assesses a penalty against the charged party, [~~a party receives notification of an assessment of a sanction,~~] the charged party must [~~shall~~] file the amount of the penalty with the Chief Clerk of Proceedings[~~:~~

[~~(1) the amount of the sanction,~~] in the form of a cashier's check, a certified check, [~~or~~] a certified draft, or other form of payment authorized by the division [~~; or~~]

[~~(2) a bond for the amount of the sanction. The bond must be:~~]

[~~(A) executed by a licensed surety company authorized to do business in Texas;~~]

[~~(B) approved by the division;~~]

[~~(C) made payable to the Texas Department of Insurance; and~~]

[~~(D) must be effective until all judicial review is final~~].

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

Filed with the Office of the Secretary of State on October 23, 2018.

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Nicholas Canaday III
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
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For further information, please call: (512) 804-4703

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVER LICENSE RULES
SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.25

The Texas Department of Public Safety (the department) proposes amendments to §15.25, concerning Address. The United States Postal Service (USPS) has adopted standards for address correction software to increase the accuracy of addresses. The use of address-matching software that meets certification standards under the Coding Accuracy Support System (CASS) adopted by the USPS will ensure that driver license address records are CASS compliant. These amendments are necessary to inform the public of the address validation system currently being used for conformation of driver license and identification card addresses to USPS standards. These amendments also update the peace officer alternative address program to add special investigators and inform the public of changes to the program made by the 85th Texas Legislature.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

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

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of these changes is better address matching to improve delivery of mailed documents and reduce the volume of returned items. Additionally, special investigators will know what information is required for them to obtain a driver license or identification card with an alternative address.

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

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

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on the proposal may be submitted to Janie Sawatsky, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to *DLDrulecomments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code; Texas Transportation Code, §521.063, which authorizes the department to adopt rules to implement mailing address verification; and Texas Transportation Code, §521.1211, which authorizes the department to issue driver licenses to peace officers or special investigators using an alternative address.

Texas Government Code, §411.004(3) and Texas Transportation Code, §§521.005, 521.063, and 521.1211 are affected by this proposal.

§15.25. Address.

The address requirement for a driver license and identification certificate is:

(1) The applicant's Texas residence address must be given. A business address is not acceptable. Applicants may be required by the department to provide proof satisfactory to the department to establish the Texas residence address provided. All documents must be verifiable.

(2) The complete street address including apartment numbers and such terms as street, circle, drive, or court should be used whenever possible. The city, state, zip code, and type of residence must be shown as part of the address on all applications for driver licenses and identification certificates. The zip code may be a five or nine digit number until such time as the nine digit number is required by the department or postal authorities. In rural areas, route number and box number should be given.

(3) The application form also provides space for a mailing address. If there is no mail delivery at the address shown, then a post office box number or other mailing address must be shown in conjunction with the Texas residence address provided. If an applicant has a mailing address in addition to the Texas residence address, which may include post office boxes or other mailing locations, it may be provided in this space.

(4) A general delivery address must not be used except in very small communities when no street or route addresses are available.

(5) A post office box number is not acceptable if a better address can be obtained. The post office box number may only be listed in addition to a Texas residence address.

(6) Military personnel and the spouse or dependent of a member of the armed forces should give a complete address such as: John Henry Smith, Co. B, 25th Inf., Camp Barkeley, Abilene, Texas. If a member of the armed forces or the spouse or dependent of a member of the armed forces has a residence address in Texas, it should be provided and used. A member of the armed forces and the spouse or dependent of a member of the armed forces may provide a residence address outside of Texas.

(7) The department has incorporated an address validation program that presents addresses using United States Postal Service (USPS) standards.

(A) Standardized addresses will be displayed on licenses and identification certificates and used for mailing purposes.

(B) Addresses that do not conform to USPS standards or do not validate may be used if the customer can verify that he/she receives mail at that address.

(8) [~~(7)~~] The department shall conduct an audit of driver license and identification certificate address information provided by driver license customers. This audit shall:

(A) validate [~~Validate~~] that the addresses being reviewed are residential addresses; and/or

(B) determine [~~Determine~~] if the same address has been provided by ten (10) or more driver license or identification certificate holders.

(9) [~~(8)~~] The department may require each driver license or identification certificate holder whose address of record is being audited to present documentation required by §15.49 of this title (relating to Proof of Domicile) and §16.7 of this title (relating to Proof of Domicile) to demonstrate the holder resides at the address of record. An acceptable list of documentation may be found in §15.49 and §16.7.

(10) [~~(9)~~] The department shall cancel any driver license or identification certificate issued to a person who does not prove that he/she resides at the address on record.

(11) [~~(10)~~] Peace officers and special investigators, as defined in the Code of Criminal Procedure, Article 2.12 and Article 2.122, may use an alternate address on their driver license under Texas Transportation Code, §521.1211. [~~The alternate address will be the street address of the courthouse in the county of the officer's residence.~~] An eligible officer must:

(A) apply [~~Apply~~] in person for an original or duplicate driver license and surrender any other driver license issued to the applicant by the department or another state. No online transactions will be allowed for issuance of duplicate or renewed licenses issued under this paragraph.

(i) [~~(B)~~] Peace officers must present [~~Present~~] a license issued by the Texas Commission on Law Enforcement (TCOLE) and a Peace Officer Identification Card and Badge issued by the officer's employing agency to establish eligibility.

(ii) Special investigators must present a federal ID and badge issued by the officer's employing agency;

(B) [~~(C)~~] provide [~~Provide~~] the actual current residence address for department records and mailing purposes;[~~.~~]

(C) [~~(D)~~] not [~~Not~~] later than 30 days after the license holder ceases to be a peace officer, apply to the department for issuance of a duplicate license that displays the person's actual current residence address;[~~.~~]

(D) [~~(E)~~] not [~~Not~~] later than 30 days after a name change and/or residence address change, notify the department of the change and obtain a duplicate license; and[~~.~~]

(E) [~~(F)~~] pay [~~Pay~~] the required fee for changes to the driver license.

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

Filed with the Office of the Secretary of State on October 25, 2018.

TRD-201804675
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: December 9, 2018
For further information, please call: (512) 424-5848

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SUBCHAPTER G. DENIAL OF RENEWAL OF DRIVER LICENSE FOR FAILURE TO APPEAR FOR TRAFFIC VIOLATION

37 TAC §15.119

The Texas Department of Public Safety (the department) proposes the repeal of §15.119, concerning Clearance Report When No Fee Is Required. The 85th Legislature passed Senate Bill 1913 and House Bill 351 which amended §706.006 of the Transportation Code to expand the conditions under which persons who fail to appear in a court would not be required to pay an administrative fee to the department. The repeal of this rule is necessary because the changes to §706.006 eliminated the need for this rule.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government, or local economies.

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

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be the repeal of an unnecessary administrative rule.

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

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

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does repeal an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on the proposal may be submitted to Janie Sawatsky, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to *DLDrulecomments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This repeal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §706.012, which authorizes the department to adopt rules necessary to administer Chapter 706 of the Texas Transportation Code.

Texas Government Code, §411.004(3) and Texas Transportation Code, §706.006 and §706.012, are affected by this proposal.

§15.119. Clearance Report When No Fee Is Required.

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

Filed with the Office of the Secretary of State on October 25, 2018.

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

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SUBCHAPTER I. RELEASE OF DRIVER RECORD INFORMATION

37 TAC §15.142

The Texas Department of Public Safety (the department) proposes amendments to §15.142, concerning Agreement to Monitor Certain Records and Purchase Driver Record Information. Section 521.062 of the Transportation Code authorized the department to establish a driver record monitoring pilot program by rule. At the conclusion of the term of pilot program, the statute authorized the Public Safety Commission to implement a permanent driver record monitoring program. This amendment removes the pilot program designation from the rule text to provide for the permanent program.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

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

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be a better understanding of the requirements for participation in driver record monitoring.

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

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

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on the proposal may be submitted to Janie Sawatsky, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to *DLDrulecomments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code; and Texas Transportation Code, §521.062, which authorizes the driver record monitoring program.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.005 and §521.062 are affected by this proposal.

§15.142. Agreement to Monitor Certain Records and Purchase Driver Record Information.

(a) Fees for the driver record monitoring program are set by contract based on the volume of records purchased during the contract period and are no less than $.06 per record per month monitored and no more than $.20 per record per month monitored.

~~[(a) The department approved Agreement Form will be used by all parties desiring to monitor certain records and/or purchase driver record information.~~

~~[(1) The pilot for a driver record monitoring program will be limited to persons eligible under Texas Transportation Code, §521.062(b).]~~

~~[(2) Fees for the driver record monitoring program will be set by contract based on the volume of records purchased during the period of the contract, and will be no less than $.06 per record per month monitored to no more than $.20 per record per month monitored.]~~

(b) The department approved Agreement Form will be used by all parties desiring to monitor certain records and/or purchase driver record information. The agreement will contain:

(1) All names used by the requestor, including names of all sub parties and companies making up the requestor's entity.

(2) All web address internet sites (Uniform Resource Locator - URL) used by the requestor.

(3) Nature of the entity's business practices.

(4) Detailed explanation of the intended uses of the requested information.

(5) Copies of agreements used by the requestor to release driver record information to third parties.

(6) Any additional material provided to third party requestors detailing the process in which they obtain driver record

information and describing their limitations as to how this information may be used.

~~(b) The agreement will contain:~~

~~(1) All names used by the requestor, including names of all sub parties and companies making up the requestor's entity.~~

~~(2) All web address internet sites (Uniform Resource Locator - URL) used by the requestor.~~

~~(3) Nature of the entity's business practices.~~

~~(4) Detailed explanation of the intended uses of the requested information.~~

~~(5) Copies of agreements used by the requestor to release driver record information to third parties.~~

~~(6) Any additional material provided to third party requestors detailing the process in which they obtain driver record information and describing their limitations as to how this information may be used.~~

(c) If the department determines any of the information provided is incomplete, inaccurate, or does not meet statutory requirements the department will not enter into an agreement to release driver record information.

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

Filed with the Office of the Secretary of State on October 25, 2018.

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: December 9, 2018
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SUBCHAPTER K. INTERAGENCY AGREEMENTS

37 TAC §15.173

The Texas Department of Public Safety (the department) proposes new §15.173, concerning Issuance to Civilly Committed Individuals/Memorandum of Understanding. The 85th Legislature passed Senate Bill 1576 which requires the department, the Texas Civil Commitment Office (TCCO), and the Department of State Health Services (DSHS), by rule, to adopt a memorandum of understanding that establishes their respective responsibilities with respect to the issuance of a personal identification certificate to a civilly committed person, including responsibilities related to verification of the person's identity. This new rule is intended to provide the information for review of that interagency agreement.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

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

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of rule will be better understanding of the requirements and processes for DL/ID issuance to civilly committed individuals.

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

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

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on the proposal may be submitted to Janie Sawatsky, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to *DLDrulecomments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This new rule is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code; Texas Transportation Code, §522.005, which authorizes the department to adopt rules necessary to administer Chapter 522 of the Texas Transportation Code; and Health and Safety Code, §841.153(c), which authorizes the agreement relating to issuance of driver licenses and identification cards to civilly committed individuals.

Texas Government Code, §411.004(3), Texas Transportation Code, §521.005 and §522.005, and Health and Safety Code, §841.153(c) are affected by this proposal.

§15.173. Issuance to Civilly Committed Individuals/Memorandum of Understanding.

(a) The Texas Department of Public Safety (DPS) adopts a memorandum of understanding with the Texas Civil Commitment Office (TCCO) and Department of State Health Services (DSHS) con-

cerning the respective responsibilities of DPS, TCCO, and DSHS in implementing the issuance of driver licenses and personal identification certificates to civilly committed individuals.

(b) The memorandum of understanding is required by Texas Health and Safety Code, §841.153(c).

(c) Copies of the memorandum of understanding are filed with the TCCO, 4616 West Howard Lane, Building 2, Suite 350, Austin, Texas 78752; DSHS, 1100 West 49th Street, Austin, Texas 78756; and with DPS, 5805 N. Lamar Blvd., Austin, Texas 78752 and may be reviewed during regular business hours.

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

Filed with the Office of the Secretary of State on October 25, 2018.

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: December 9, 2018
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CHAPTER 21. EQUIPMENT AND VEHICLE SAFETY STANDARDS

37 TAC §21.3

The Texas Department of Public Safety (the department) proposes amendments to §21.3, concerning Standards for Sunscreening and Privacy Window Devices. This amendment repeals language duplicative of federal regulations and simplifies the process by which a driver or vehicle owner may establish entitlement to a medical condition-based exemption from the window tint requirements of Transportation Code, §547.613. Current rule language requires a driver present a department issued letter of authorization to law enforcement in order to establish entitlement to the exemption. Current rule language also describes the process by which the department issues such letters of authorization, following the review of documentation submitted by the vehicle owner establishing a medical reason to be shielded from the direct rays of the sun. The proposed amendment eliminates this process, instead requiring the driver present the documentation from a physician directly to law enforcement upon request.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

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

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be greater clarity and consistency in the regulations pertaining to equipment and vehicle safety standards in the state, and the simplification of related administrative processes.

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

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

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does limit an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email at *https://www.dps.texas.gov/rsd/contact/default.aspx*. Select "Vehicle Inspection". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §547.101, which authorizes the department to adopt rules to administer and enforce Chapter 547.

Texas Government Code, §411.004(3) and Texas Transportation Code, §547.101 are affected by this proposal.

§21.3. Standards for Sunscreening and Privacy Window Devices.

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

(1) Sunscreening device--A glazing, film material, or device for reducing the effects of visible sunlight and/or preventing observation. This does not include glazing or film material without visible tinting providing protection from the effects of ultraviolet light because this type of sunlight is not visible to the human eye.

(2) Light transmission--The ratio of the amount of total visible light to pass through a product or material to the amount of total visible light falling on the product or material and the glazing.

(3) Luminous reflectance--The ratio of the amount of total visible light that is reflected outward by a product or material to the amount of total visible light falling on the product or material.

(4) Driver rear visibility requirement--To meet this requirement a motor vehicle must be equipped with outside mirrors on both the left and right sides of the vehicle that are located so as to reflect to the driver a view of the highway through each mirror a distance of at least 200 feet to the rear of the vehicle.

(5) Multipurpose vehicles are those designated as such by the vehicle manufacturer. Sports utility vehicle (SUV) or similar terms denote the vehicle as multipurpose. Generally, it is a motor vehicle designed to carry 10 or fewer persons constructed on either a truck chassis or a passenger vehicle chassis, with special features for occasional off-road use.

(6) Manufacturer--A person or business engaged in the manufacturing or assembling of a sunscreening device; or fabricates, laminates, or tempers a safety glazing material, incorporating, during the manufacturing process, the capacity to reflect or reduce the transmission of light.

(7) Installer--Any person or business engaged for hire in the installation of sunscreening device products or materials designed to be used in conjunction with vehicle glazing material for the purpose of reducing the effects of the sun.

(b) [~~Originally equipped, factory installed, and/or replacement windows meeting the specifications of the vehicle manufacturer. Equipment standards employed in the manufacture of new motor vehicles for first time sale are preemptive under federal law. Federal Motor Vehicle Safety Standard 205, incorporating American National Standards Institute (ANSI) Z26.1, allows inclusion of sunscreening device features into the glazing of vehicle safety glass.~~] All sunscreening devices used as standard equipment, optional equipment, or in replacement parts, adhering to the federal standards [~~standard~~] at the time of vehicle manufacture, are authorized. [~~In general, the amount of sunscreening devices and other glazing features allowed under the federal standard depends on the location of the window and the vehicle type classification. Paragraphs (1) - (3) provide a summary of the federal restrictions for window glazing (tint).~~]

[~~(1) Windshields.~~]

[~~(A) The AS-1 area is the portion of the windshield based on driver seating configuration where the driver must have forward visibility.~~]

[~~(B) The windshield may also have a glazing shade band for driver comfort. This shading band is generally above the AS-1 area.~~]

[~~(C) An AS-1 line indicator, if present, denotes the boundary of the AS-1 area and the shading band. If the AS-1 line indicator is not present, generally, the shade band should not extend further than approximately five inches from the top of the windshield.~~]

[~~(D) The safety glass used for all vehicle windshields below the AS-1 line must have a 70% light transmission value.~~]

[~~(E) The glazing in the shade band area may have less than a 70% light transmission.~~]

[~~(2) Side Windows. The vehicle type determines the specific window requirements.~~]

[~~(A) Passenger vehicles.~~]

~~*(i)* All moveable side windows must have a 70% light transmission value over the entire surface area of the window.~~]

~~*(ii)* Fixed windows to the rear of the driver may have shading bands with less than 70% light transmission at the uppermost top as with the windshield.~~]

[~~(B) All buses, vans, club wagons, motor homes, trucks and truck tractors, and multipurpose vehicles.~~]

~~*(i)* Side windows to the immediate left and right of the operator must have a 70% light transmission value over the entire surface area of the window.~~]

~~*(ii)* Side windows to the rear of the driver have no restrictions on sunscreening.~~]

[~~(3) Rear (back) windows for passenger, bus, van, club wagon, motor home, truck and truck tractor, and multipurpose vehicles.~~]

[~~(A) If vehicle has left and right outside mirrors (no driver rear visibility requirement), there is no minimum light transmission requirement.~~]

[~~(B) If vehicle is not equipped with both a left and right side outside mirrors, the rear window must have a 70% light transmission value for the area used for driver visibility. A glazing shade band is authorized at the topmost portion of the rear window, as with the windshield. The glazing in the shade band area is authorized to have less than 70% light transmission.~~]

(c) After-market sunscreening devices. Standards and specifications described in paragraphs (1) - (4) of this subsection apply to after-market sunscreening devices applied in conjunction with window glazing (vehicle safety glass) meeting federal standards.

(1) All installed after-market sunscreening devices will be measured in combination with the vehicle's original equipment (window glass).

(2) Windshields. No after-market sunscreening devices shall be installed, affixed, or applied to a vehicle windshield below the AS-1 line, or five inches from the top of the windshield if the AS-1 line annotation is not present.

(A) If an additional sunscreening device is used above the AS-1 area of the windshield, the light transmission value, in combination with the original windshield glazing, must be 25% or more.

(B) The luminous reflectance of any additional sunscreening devices used above the AS-1 area of the windshield must be 25% or less.

(C) An installed after-market sunscreening device used on the windshield may not be of a red, blue, or amber color.

(3) Side Windows. The vehicle type determines the specific windows affected.

(A) Passenger vehicles. All side windows of the vehicle must have at least a 25% light transmission value and luminous reflectance of 25% or less, over the entire surface area of the window.

(B) Buses, vans, club wagons, motor homes, trucks and truck tractors, and multipurpose vehicles. Windows to the immediate left and right of the operator must have at least a 25% light transmission value and luminous reflectance of 25% or less, over the entire surface area of the window. Side windows to the rear of the driver, both left and right, have no minimum requirement for light transmission.

(4) Rear (back) windows for passenger, bus, van, club wagon, motor home, truck and truck tractor, and multipurpose vehicles.

(A) If the vehicle has left and right outside mirrors that are located so as to reflect to the driver a view of the highway through each mirror a distance of at least 200 feet to the rear of the vehicle, there is no minimum light transmission requirement.

(B) If the vehicle is not equipped with both a left and right side outside mirrors that are located so as to reflect to the driver a view of the highway through each mirror a distance of at least 200 feet to the rear of the vehicle, the rear window must have a 25% light transmission value for the area used for driver visibility value. A glazing shade band is authorized at the topmost portion of the rear window, as with the windshield. The shade band area is authorized to have less than 25% light transmission. The device must have a luminous reflectance of 25% or less.

(d) Window covers and other window privacy devices.

(1) The use of curtains, blinds, drapes, or stick-on novelty designs in the rear window or windows is not prohibited if the window(s) are not required for driver rear visibility.

(2) Louvered materials, when installed as designed, shall not reduce the area of driver rear visibility below 50% as measured on a horizontal plane. When such materials are used in conjunction with the rear window, the measurement shall be made based upon the driver's view from the inside rearview mirror.

(e) Medical exceptions.

(1) Notwithstanding [~~Not withstanding~~] the foregoing provisions of this section, a motor vehicle operated by or regularly used to transport any person with a medical condition which renders the person susceptible to harm or injury from exposure to sunlight or bright artificial light may be equipped, on all the windows except the windshield, with sunscreening devices that reduces the light transmission values of less than 25%. An untinted film or glaze may be applied to the area below the AS-1 line of the windshield of a motor vehicle provided the total visible light transmission is not reduced by [~~a value of~~] 5%. Vehicles equipped with sunscreening devices under this medical exception shall not be operated on any highway unless, while being so operated, the driver or an occupant of the vehicle possesses a signed statement from a licensed physician or licensed optometrist [~~a certificate issued by the Texas Department of Public Safety~~].

(2) The [~~Texas Department of Public Safety shall issue such certificates only upon application by the affected individual accompanied by a~~] signed statement from a licensed physician or licensed optometrist shall [~~which~~]:

(A) identify [~~identifies~~] with reasonable specificity the driver or occupant of the vehicle [~~the person seeking the certificate~~]; and

(B) state [~~states~~] that, in the physician's or optometrist's professional opinion, the equipping of the vehicle with sunscreening devices is necessary to safeguard the health of the driver or occupant of the vehicle [~~person seeking the certificate~~].

~~[(3) Medical exemption certificates issued under this subsection shall be valid so long as the condition requiring the use of the sunscreening devices persists, until the prescription expires, or until the vehicle is sold, whichever first occurs.]~~

(f) Manufacturer and installer requirements.

(1) Each manufacturer shall obtain certification from the Texas Department of Public Safety of sunscreening devices used on the side windows of passenger vehicles and windows immediately to the left and right of the vehicle operator on all other vehicles. To obtain certification the manufacturer will provide test results that the product or material manufactured or assembled complies with the light transmission and luminous reflectance requirements of this section.

(2) Each manufacturer shall provide a label with a means for permanent and legible installation between the material and each glazing surface to which it is applied that contains the name or registration number of the manufacturer and a statement that complies with Texas Transportation Code, §547.609.

(3) Each manufacturer shall include instructions with the sunscreening device, product, or material for proper installation, including the affixing of the label required by this section.

(4) No installer or business shall apply or affix to the windows of any motor vehicle in this state a sunscreening device that is not in compliance with requirements of this section.

(5) At a minimum, installers shall affix the label described in subsection (f)(2) of this section between the sunscreening device and the lower rearward corner of the driver's left side window which is legible from the outside of the vehicle.

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

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CHAPTER 23. VEHICLE INSPECTION
SUBCHAPTER A. VEHICLE INSPECTION STATION AND VEHICLE INSPECTOR CERTIFICATION

37 TAC §23.5

The Texas Department of Public Safety (the department) proposes an amendment to §23.5, concerning Vehicle Inspection Station and Vehicle Inspector Disqualifying Criminal Offenses. Currently, the rule provides that a felony conviction for an offense that does not relate to the occupation of vehicle inspector is disqualifying for five years from the date of conviction. However, pursuant to Texas Occupations Code, §53.021(a)(2), the disqualification period should run from the date the offense was committed. The proposal changes "conviction" to "commission," to accurately reflect the language of Occupations Code, §53.021(a)(2).

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

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

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated

as a result of enforcing the rule will be consistency with statutory authority underlying the evaluation of certain criminal histories.

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

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

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should not impact positively or negatively the state's economy.

Other comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email at *https://www.dps.texas.gov/rsd/contact/default.aspx*. Select "Vehicle Inspection". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer Chapter 548, and Texas Occupations Code, §53.021.

Texas Government Code, §411.004(3), Texas Transportation Code, §548.002, and Texas Occupations Code, §53.021 are affected by this proposal.

§23.5. Vehicle Inspection Station and Vehicle Inspector Disqualifying Criminal Offenses.

(a) Vehicle inspection stations and vehicle inspectors are entrusted with ensuring the safety and fitness of vehicles traveling on the roads of Texas. Vehicle inspection stations and vehicle inspectors have constant access to and are responsible for the lawful disposition of government documents. For these reasons, the department has determined that the offenses contained within this section relate directly to the duties and responsibilities of vehicle inspection stations and vehicle inspectors certified under Texas Transportation Code, Chapter 548. The types of offenses listed in this section are general categories that include all specific offenses within the corresponding chapter of the Texas Penal Code and any such offenses regardless of the code in which they appear.

(b) The offenses listed in paragraphs (1) - (9) of this subsection are intended to provide guidance only, and are not exhaustive of either the types of offenses that may relate to vehicle inspections or the operation of a vehicle inspection station or those that are independently disqualifying under Texas Occupations Code, §53.021(a)(2) - (4). The disqualifying offenses also include those crimes under the laws of another state or the United States, if the offense contains elements that are substantially similar to the elements of a disqualifying offense under the laws of this state. Such offenses also include the "aggravated" or otherwise heightened versions of the offenses listed in paragraphs (1) - (9) of this subsection. In addition, after due consideration of the circumstances of the criminal act and its relationship to the position of trust involved in vehicle inspections or the operation of a vehicle inspection station, the department may find that a conviction not described in this section also renders a person unfit to hold a certificate as a vehicle inspector or vehicle inspection station owner. In particular, an offense that is committed in one's capacity as a vehicle inspection station owner or vehicle inspector, or an offense that is facilitated by licensure as an owner or inspector, will be considered related to the occupation and will render the person unfit to hold the certification.

(1) Arson, Criminal Mischief, and Other Property Damage or Destruction (Texas Penal Code, Chapter 28).

(2) Robbery (Texas Penal Code, Chapter 29).

(3) Burglary and Criminal Trespass (Texas Penal Code, Chapter 30).

(4) Theft (Texas Penal Code, Chapter 31).

(5) Fraud (Texas Penal Code, Chapter 32).

(6) Bribery and Corrupt Influence (Texas Penal Code, Chapter 36).

(7) Perjury and Other Falsification (Texas Penal Code, Chapter 37).

(8) Criminal Homicide (Texas Penal Code, Chapter 19).

(9) Driving Related Intoxication Offenses (Texas Penal Code, Chapter 49).

(c) A felony conviction for any such offense is disqualifying for ten years from the date of conviction, unless the offense was committed in one's capacity as a vehicle inspection station owner or vehicle inspector, or was facilitated by licensure as an owner or inspector, in which case it is permanently disqualifying. Conviction for a sexually violent offense as defined by Texas Code of Criminal Procedure, Article 62.001, or an offense listed in Texas Code of Criminal Procedure, Article 42.12 §3g or Article 42A.054, is permanently disqualifying.

(d) A felony conviction for an offense not listed or described in this section that does not relate to the occupation is disqualifying for five years from the date of commission [~~conviction~~], pursuant to Texas Occupations Code, §53.021(a)(2).

(e) A Class A misdemeanor conviction for an offense listed in this section and any other offense determined by the department to directly relate to the duties and responsibilities of vehicle inspection stations or vehicle inspectors, including any unlisted offense committed in one's capacity as a vehicle inspection station owner or vehicle inspector or that was facilitated by licensure as an owner or inspector, is disqualifying for five years from the date of conviction.

(f) A Class B misdemeanor conviction for an offense listed in this section and any other offense determined by the department to directly relate to the duties and responsibilities of vehicle inspection stations or vehicle inspectors, including any unlisted offense committed in one's capacity as a vehicle inspection station owner or vehicle in-

spector or that was facilitated by licensure as an owner or inspector, is disqualifying for two years from the date of conviction.

(g) For purposes of this section, a person is convicted of an offense when an adjudication of guilt or an order of deferred adjudication for the offense is entered against the person by a court of competent jurisdiction.

(h) A person who is otherwise disqualified pursuant to the criteria in this section may submit documentation as detailed in paragraphs (1) - (8) of this subsection as evidence of his or her fitness to perform the duties and discharge the responsibilities of a vehicle inspection station certificate holder or vehicle inspector:

(1) the [~~The~~] extent and nature of the person's past criminal activity;[.]

(2) the [~~The~~] age of the person when the crime was committed;[.]

(3) the [~~The~~] amount of time that has elapsed since the person's last criminal activity;[.]

(4) the [~~The~~] conduct and work activity of the person before and after the criminal activity;[.]

(5) evidence [~~Evidence~~] of the person's rehabilitation or rehabilitative effort while incarcerated or after release;[.]

(6) letters [~~Letters~~] of recommendation from:

(A) prosecutors, law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(B) the sheriff or chief of police in the community where the person resides; or

(C) any other person in contact with the convicted person;[.]

(7) evidence [~~Evidence~~] the applicant has:

(A) maintained a record of steady employment;

(B) supported the applicant's dependents;

(C) maintained a record of good conduct; and

(D) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted; and[.]

(8) any [~~Any~~] other evidence relevant to the person's fitness for the certification sought.

(i) The failure to provide the required documentation in a timely manner may result in the proposed action being taken against the application or license.

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

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SUBCHAPTER D. VEHICLE INSPECTION ITEMS, PROCEDURES, AND REQUIREMENTS

37 TAC §23.41

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 37 TAC §23.41 is not included in the print version of the Texas Register. The figure is available in the online version of the November 9, 2018, issue of the Texas Register.)

The Texas Department of Public Safety (the department) proposes amendments to §23.41, concerning Passenger (Non-Commercial) Vehicle Inspection Items. The inspection items are listed in the DPS Training and Operations Manual which is included by reference in this rule. Section 4.20.35 in the Manual is amended to simplify the process by which a vehicle owner may obtain a safety inspection of a vehicle in the event the vehicle is equipped with window tint in violation of Transportation Code, §547.613. Current language describes a process by which the department issues letters of authorization following the review of documentation submitted by the vehicle owner establishing a medical reason to be shielded from the direct rays of the sun. The proposed amendment eliminates this process, instead requiring the driver present the documentation directly to the vehicle inspector. In addition, Section 4.15.6 in the Manual is amended to clarify the manner in which safety inspections are to be conducted on "glider trucks" (a new truck cab and chassis built by the original equipment manufacturer assembled with an earlier model engine), providing the exhaust and emissions systems are to be inspected based on the requirements in place at the time of the engine's manufacture.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

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

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be improved efficiency in safety inspections relating to window tint, and improved clarity and consistency in the administration of the vehicle inspection program as it concerns the safety inspection of glider trucks.

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

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

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does limit an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email at *https://www.dps.texas.gov/rsd/contact/default.aspx*. Select "Vehicle Inspection". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §547.101, which authorizes the department to adopt rules to administer Chapter 547.

Texas Government Code, §411.004(3) and Texas Transportation Code, §547.101 are affected by this proposal.

§23.41. Passenger (Non-Commercial) Vehicle Inspection Items.

(a) All items of inspection enumerated in this section shall be required to be inspected in accordance with the Texas Transportation Code, Chapter 547, any other applicable state or federal law, and department or federal regulation as provided in the DPS Training and Operations Manual prior to the issuance of a vehicle inspection report.

(b) All items must be inspected in accordance with the attached inspection procedures. (The figure in this section reflects excerpts from the DPS Training and Operations Manual, Chapter 4.)
Figure: 37 TAC §23.41(b)
[~~Figure: 37 TAC §23.41(b)~~]

(c) A vehicle inspection report may not be issued for a vehicle equipped with a compressed natural gas (CNG) fuel system unless the vehicle inspector can confirm in a manner provided by subsection (d) of this section that:

(1) the CNG fuel container meets the requirements of Code of Federal Regulations, Title 49, §571.304; and

(2) the CNG fuel container has not exceeded the expiration date provided on the container's label.

(d) The requirements of subsection (c) of this section may be confirmed by any appropriate combination of the items detailed in paragraphs (1) - (3) of this subsection:

(1) Observation of Container Label. The vehicle inspector may confirm the requirement of subsection (c)(2) of this section through direct observation of the expiration date on the container;

(2) Observation of Label at Fueling Connection Receptacle. The vehicle inspector may confirm through direct observation of a label affixed to the vehicle by the original equipment manufacturer or by a certified installer or inspector of CNG systems (as defined in subsection (g) of this section) reflecting that the requirements of subsection (c)(1) or (c)(2) of this section are satisfied; or

(3) Documentation. The vehicle owner may furnish to the vehicle inspector documentation provided by the original vehicle equipment manufacturer or by a certified installer or inspector of CNG systems (as defined in subsection (g) of this section) reflecting that either or both requirements of subsection (c)(1) and (c)(2) of this section are satisfied.

(e) The owner or operator of a fleet vehicle may, as an alternative to the requirements of subsection (c) of this section, provide proof in the form of a written statement or report issued by the owner or operator that the vehicle is a fleet vehicle for which the fleet operator employs a certified installer or inspector of CNG systems (as defined in subsection (g) of this section).

(f) A copy of the written statement or report provided to the vehicle inspector under subsections (d)(3) or (e) of this section must be maintained in the vehicle inspection station's files for a period of one year from the date of the inspection and made available to the department on request.

(g) Certified installer or inspector of CNG systems: For purposes of this section, a certified installer or inspector of CNG systems is a person licensed by the Railroad Commission of Texas under 16 TAC §13.61.

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

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SUBCHAPTER G. VEHICLE INSPECTION ADVISORY COMMITTEE

37 TAC §23.74

The Texas Department of Public Safety (the department) proposes the repeal of §23.74, concerning Manner of Reporting. The repeal of this rule will simplify and generally clarify the responsibilities of the committee. The rule imposed requirements on the committee determined to be unnecessary.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government, or local economies.

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

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be simplification and greater clarity in the rules governing the vehicle inspection advisory committee.

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

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

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does repeal an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email at *https://www.dps.texas.gov/rsd/contact/default.aspx.* Select "Vehicle Inspection". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This repeal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer Chapter 548.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002, are affected by this proposal.

§23.74. Manner of Reporting.

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

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