

SUBCHAPTER A. Automobile Insurance
Division 7. Financial Responsibility Verification Program
28 TAC §§5.601 – 5.611

1. INTRODUCTION. The Commissioner of Insurance adopts new Division 7, §§5.601 – 5.611, concerning the Financial Responsibility Verification Program to verify coverage under the Texas Motor Vehicle Safety Responsibility Act as required by SB 1670, 79th Legislature, Regular Session. Sections 5.602 – 5.611 are adopted with changes to the proposed text published in the September 8, 2006 issue of the *Texas Register* (31 TexReg 7226). Section 5.601 is adopted without change.

2. REASONED JUSTIFICATION. The adopted sections detail administrative requirements for insurers to comply with the Financial Responsibility Verification Program (program), including setting forth the types of insurance policy information that the Department, in consultation with the Texas Department of Transportation (TxDOT), the Texas Department of Public Safety (DPS), and the Texas Department of Information Resources (DIR) (the implementing agencies), have determined will be necessary for the vendor to carry out the program and implement the requirement in Transportation Code §601.454(a) that each insurance company providing personal automobile insurance policies in this state must provide the necessary insurance policy information to the vendor. The adopted sections are necessary to specify program requirements, procedures, duties, and obligations for insurers writing personal automobile insurance policies that establish financial responsibility required by the Texas Motor Vehicle Safety Responsibility Act, Transportation Code, Chapter 601. In accordance with SB 1670, the

adopted sections are currently limited to insurers providing motor vehicle liability insurance under a personal automobile insurance policy in this state. The program will be implemented for commercial insurance policies in the future when the implementing agencies determine that it is feasible. The commercial program will be implemented through a separate rulemaking process.

SB 1670 enacted by the 79th Legislature, Regular Session, added Subchapter N to Chapter 601 of the Transportation Code. SB 1670 requires the establishment of a program for verification of whether owners of motor vehicles have established financial responsibility as required by the Texas Motor Vehicle Safety Responsibility Act, Transportation Code, Chapter 601. Section 601.452(a) requires the Department, in consultation with the other implementing agencies, to establish the program. The program must meet the specific statutory requirements of §601.452(a), including being most likely to: reduce the number of uninsured motorists in this state; operate reliably; be cost effective; sufficiently protect the privacy of the motor vehicle owners; sufficiently safeguard the security and integrity of information provided by insurance companies; identify and employ a method of compliance that improves public convenience; provide information that is accurate and current; and also be capable of being audited by an independent auditor. Section 601.452(b) provides that the implementing agencies jointly adopt rules to administer the program. Section 601.452(c) requires the implementing agencies to convene a working group to facilitate implementation of the program, assist in the development of rules, and coordinate a testing phase and necessary changes identified in the testing phase. Pursuant to §601.452(c), the

working group is statutorily required to be composed of representatives of the implementing agencies, the insurance industry, and technical experts with the skills and knowledge required to create and maintain the program, including knowledge of privacy laws. The working group was first convened in July 2005, before SB 1670 became effective on September 1, 2005. Through subsequent meetings, the Department and the other implementing agencies have worked with the working group to facilitate the implementation of the program and the development of the adopted sections. Adopted §§5.601 – 5.611 are the result of the process of joint consultation and coordination among the implementing agencies culminating with the Department's proposal and adoption of rules necessary for the Department to administer its program responsibilities under Transportation Code, Chapter 601, Subchapter N and §502.1715, including, as required by §601.454, setting forth the insurance policy information the implementing agencies have determined to be necessary for the vendor to carry out the program and the means by which insurers are to submit that insurance policy information to the vendor. The Department will continue to work with the other implementing agencies, the insurance industry, and technical experts to facilitate the implementation of the program and coordinate the testing of the program.

The Department, in consultation with the other implementing agencies, as required under Transportation Code §601.451(a), has established the program. The program contemplates verification of insurance through both an event based process and an ongoing verification process. The event based process allows users to obtain accurate and current insurance verification information promptly upon request. The

ongoing verification process allows for the matching of insurer records to TxDOT data to identify uninsured vehicles on a continuous basis. Users of both processes will be checking that insurance is maintained in compliance with the Texas Motor Vehicle Safety Responsibility Act. Users will include TxDOT, law enforcement officers, and inspection stations.

Additionally, as required by Transportation Code §601.453, the Department, in consultation with the other implementing agencies, has initiated a competitive bidding procedure for the purpose of selecting an agent to develop, implement, operate, and maintain the program. The program agent will be contractually required to maintain all data, including the insurer provided policy information required by adopted §§5.601 – 5.611, and operate the system in a manner that will sufficiently protect the privacy of motor vehicle owners and drivers and safeguard the security and integrity of insurance company information. To avoid confusion with insurance related terms referencing *agent*, the term *vendor* is used in this adoption to refer to the §601.453 agent in lieu of the term *program agent*.

The program allows insurers to select between the database system and web services system as a method of program compliance. The database system requires insurers to weekly submit the required data for use in a vendor maintained database. The vendor will match insurer submitted data to TxDOT data using both direct matching and cascading data matching algorithms that are designed to analyze possible, but not exact, matches and determine if it is more likely than not that a match exists with the insurance policy in question. Unmatched policy records will be reported to the insurer

as errors for confirmation or correction of policy information. The vendor will then use the stored submitted matched data to respond to user inquiries. The web services system requires the insurer to develop and maintain the insurer's own matching program. The web services system in adopted §§5.606 – 5.608 remains as described in the proposal and is designed to function within the existing framework of data maintained by TxDOT and DPS equipment, as well as meet DPS concerns regarding law enforcement officer safety. The web services system insurer will develop its own matching algorithm and be responsible for error checking its data against supplied TxDOT records to identify unmatched policy records. The Department will determine if an insurer's web services system meets the requirements set forth in adopted §§5.606 – 5.608. The web services insurer will receive and respond to user requests through the vendor. The type of system selected by the insurer will not affect users or the public because users will be able to access both systems through the vendor using the same request criteria.

The program will meet the legislative requirements set forth in Transportation Code §601.452(a) by being most likely to: (i) reduce the number of uninsured motorists through more thorough enforcement of the Texas Motor Vehicle Safety Responsibility Act by providing an enhanced means of verifying insurance coverage during events such as traffic stops and vehicle inspections, as well as providing for continuous identification of uninsured vehicles through the ongoing verification process; (ii) operate reliably through use of technology and systems that have been shown to operate reliably in existing verification systems established in other states; (iii) be cost effective

considering currently available technology, equipment, information databases, and resources of the implementing agencies, users, insurance industry, and insured public; (iv) protect policyholder privacy and insurer data security through the use of contractually required vendor security measures; (v) provide improved convenience to the public by not imposing additional procedures or requirements for compliance on the public and by using cascading data matching to reduce the number of unmatched insurance policies; and (vi) provide available insurer information that is current based on weekly data submissions and can be tested against TxDOT's database for accuracy. Both the database system and web services system allow for the program to be independently audited.

The adopted sections also provide for voluntary participation in a test program that will use insurer provided key-data to provide verification of financial responsibility under the Texas Motor Vehicle Safety Responsibility Act. Numerous comments were received advocating that a test program based on the Insurance Industry Committee on Motor Vehicle Administration (IICMVA) model be adopted in place of the web services system or that the test program be made more prominent in the text of the rule. Commenters also indicated that a system similar to the IICMVA model was undergoing limited testing in Florida and was adopted for future use in Wyoming. However, the commenters did not demonstrate that the IICMVA system was acceptable to all of the implementing agencies as a means of program compliance, as would be required by SB 1670. Moreover, two commenters conceded that the IICMVA model is not ready for implementation in Texas at this time and proposed that the pilot program could assist in

preparing the IICMVA model for acceptance in Texas. As such, the adopted web services system in §§5.606 – 5.608 is not the IICMVA web services model and the Department declines to make such an alteration. Adopted §5.611 continues to provide for voluntary participation in a test program that will use insurer provided key-data to provide verification of financial responsibility under the Texas Motor Vehicle Safety Responsibility Act. Adopted §5.611 has been revised to indicate a path by which the test program can be tested and, if accepted by the implementing agencies, approved for use in Texas. Adopted §5.611, however, has not been defined as, or limited to, the existing IICMVA model, so that the adopted provision will allow for potential change and innovation between the participating insurers and implementing agencies. Adopted §5.611 also clarifies that the test program is not limited to §§5.606 – 5.608.

Finally, while the requirements in the adopted sections are limited to personal automobile insurance policies, commercial insurance policy information may be reported at the insurer's option. Optional reporting of commercial insurance policy information must be done in a manner consistent with this adoption.

In addition to the changes to adopted §5.611, the Department has made several other changes to the proposed sections based on comments received by the Department. None of these changes, including the changes to adopted §5.611, introduce new subject matter or affect persons in addition to those subject to the proposal as published. These comments and changes are discussed in the following paragraphs of this section.

The Department received a comment questioning the Department's compliance with the Administrative Procedures Act (APA), Government Code, Chapter 2001. More specifically, the commenter argued that since the user guide creates requirements that insurers could be sanctioned for violating, the user guide must be adopted separately as a rule or as part of the proposed rule. Additionally, the commenter objected to the proposal because a completed user guide was not available for review at the same time as the proposed rule and, thus, claimed that proper notice of the rule was not given pursuant to the APA. Several other commenters also complained about the lack of a user guide for review and comment before the adoption of the proposal. The Department disagrees with these assertions and argues that they are contrary to the language of SB 1670. Under SB 1670, the Legislature specifically granted rulemaking authority to administer, or carry out, Transportation Code, Chapter 601, Subchapter N, in Transportation Code §§601.452(b) and 502.1715(b). However, while SB 1670 provides clear instruction to adopt rules, it does not state that the user guide is to be adopted by rule or as a rule. Instead, SB 1670, Section 4, provides clear instruction that *[t]he agencies responsible for implementing Subchapter N, Chapter 601, Transportation Code, as added by this Act, shall adopt rules and establish and publish a user guide clearly specifying requirements and procedures for providing information under the verification program under that subchapter. As such, the user guide is not a rule, or required to be part of the rules to be adopted to administer, or to carry out, Transportation Code, Chapter 601, Subchapter N.*

Transportation Code §601.452 sets forth the requirement to establish the program. Transportation Code §601.453 describes the program agent (herein called the vendor) and the scope of the vendor's contract. Transportation Code §601.454 requires insurance companies to submit data determined by the implementing agencies as necessary for the vendor to carry out the program. This adoption sets forth the insurance policy information that the implementing agencies have determined will be necessary for the vendor to carry out the program and implements the requirement that the insurer must provide that information to the vendor. The user guide does not create these requirements.

The user guide will contain references to statutes of this state and these adopted sections. However, to that end, the user guide is just a reference tool because the user guide cannot alter the referenced statutes or the adopted sections. What the user guide will do is explain how the information required under this adoption is to be submitted. As such, while the user guide will have general applicability to insurers, it is questionable whether, under Government Code §2001.003(6), that the user guide constitutes a *state agency statement* that either *implements, interprets, or prescribes law or policy; or describes the procedure or practice requirements of a state agency*. The Department's interpretation is that, as a document, the user guide does not meet the §2001.003(6) definition of a *rule*.

As to the question of opportunity to comment on the user guide, the Department disagrees that this is a requirement under SB 1670 or the APA. The user guide is not a rule. It does not create the obligation to submit data to the vendor. Neither the APA nor

SB 1670 requires public comment on the user guide. However, although not required, the Department has solicited comments from the public and users on a draft user guide, including publishing notice of a draft user guide for comment in the October 20, 2006 issue of the *Texas Register* (31 TexReg 8766).

In summary, the Legislature identified the rules to be adopted and specifically did not require the user guide to be adopted by reference or as a separate rule. Further, the user guide does not fit within the scope of a *rule* as defined by Government Code §2001.003. The adopted sections administer the program, including specifying the information that the implementing agencies have determined to be necessary for the vendor to carry out the program and implementing the requirement for the insurers to submit that data to the vendor. The user guide provides guidance for complying with those sections.

While the Department disagrees with the commenter that the user guide must be adopted as a rule and/or be subject to public comment for the preceding reasons, the Department has changed proposed §5.603 in this adoption to clarify that *[t]he user guide established in accordance with SECTION 4 of SB 1670 (Acts 2005, 79th Leg., R.S., chap. 892, SB 1670 sec. 4) will provide guidance to insurers on how to comply with the requirements and procedures specified in §§5.601 – 5.611. Additionally, as a result of this change, the Department has changed the definition in proposed §5.602 as adopted to define the term *user guide* instead of the term *manual*. The Department has also changed proposed §§5.604(c) and (e); 5.605(d) and (e); 5.606(c), (d), (e) and (f); and 5.608(j) as adopted, and has also deleted proposed §§5.607(j) and 5.608(k) in their*

entirety, to remove proposed references to manual requirements that the Department has determined are no longer necessary because of the change to §5.603 as adopted.

Several commenters questioned whether SB 1670 authorizes the program to verify financial responsibility for both owners and drivers of motor vehicles. Some commenters also questioned whether the driver of a motor vehicle could use his personal insurance to satisfy the requirements of the Texas Motor Vehicle Safety Responsibility Act and the program when the owner of the vehicle does not have appropriate motor vehicle insurance. Another commenter argued that SB 1670 contemplated only whether owners of motor vehicles had established financial responsibility, and did not expand the program to incorporate operators of motor vehicles. The commenter noted that the Legislature could have crafted the bill to include both owners and operators had it chosen to do so. The Department disagrees that SB 1670 limits the program solely to verifying whether the registered owner of a motor vehicle has established financial responsibility for that vehicle. Rather, the program extends to verifying compliance with the Texas Motor Vehicle Safety Responsibility Act as indicated by the SB 1670 requirement that the program be most likely to employ a method of compliance that improves public convenience. Transportation Code §601.051(1) provides that a person may operate a motor vehicle if the person has established financial responsibility for the vehicle through an insurance policy that complies with Transportation Code, Chapter 601, Subchapter D. Transportation Code §601.071 provides that acceptable insurance may be in the form of an owner or operator's policy. To the extent that an operator is entitled under law to

comply with the Texas Motor Vehicle Safety Responsibility Act via an operator's policy, the convenience of the program would be diminished if the program did not provide a means for the operator to have that compliance verified. This rule does not change the requirements of how a person can establish financial responsibility under the Texas Motor Vehicle Safety Responsibility Act. This adoption refers herein to the term *driver* rather than *operator*, but as used herein the two terms have the same meaning. The Department has revised proposed §5.602 definitions of *event based process* and *match rate* and §5.607 and adopted them without references to term *driver* and/or *motorist* in order to clarify that the scope of the program applies to verification of coverage and also to indicate that the program responses will be to specific insurance verification inquiries.

Commenters were concerned that the term *covered individuals* in proposed §5.604(c) could be confusing because, under a standard personal automobile insurance policy, any authorized individual could be *covered*. A commenter recommended changing *covered individuals* to *listed individuals*. The Department agrees that clarification is needed. However, it is the Department's position that changing the subsection to include *listed driver* would provide sufficient clarification, and the word *driver* is consistent with the required reporting fields specified in §§5.604(c), 5.607(e), and 5.608(d) that reference *driver*. In accordance with the purpose of SB 1670, it is not the Department's intent to address all possible coverage scenarios, but rather to require the necessary information to identify those persons associated with the insurance policy. The use of the term *covered* in the proposed §5.604(c) was an inadequate expression of this purpose. Substituting the term *listed driver*, meaning *a driver listed*

on a personal automobile insurance policy, in place of *covered individual* should clarify this reporting requirement and provide the vendor with sufficient information for more efficient data matching, including cascading data matching. Additionally, while it may be inferred from the context of the proposal, a statement limiting this information to policies in force in Texas is necessary to clarify the insurance policy information required to be submitted to the vendor under §5.604(c). Therefore, the Department has changed proposed §§5.604(c) and (c)(4), 5.607(e)(2) and (4) – (6), and 5.608(d)(4) as adopted, to require the insurer to report each *listed driver*. These changes clarify the reporting requirement and confirm that the reporting requirement is part of the program and will also provide the necessary information for the vendor to carry out the program. In connection with this change, the term *listed driver*, meaning a *driver listed on a personal automobile insurance policy*, has been added as a definition in adopted §5.602(14). For reasons stated in the following comment and response the definition of *listed driver* does not include named excluded drivers. Also the descriptive phrase *in Texas* has been added to adopted §5.604(c) to clarify that the required insurance policy information to be reported by the insurer to the vendor are those policies that are in force in Texas. In connection with these changes the Department has made nonsubstantive grammatical changes to these subsections.

In related comments, some commenters questioned whether named excluded driver data would have to be reported under the proposed text. Some commenters argued that reporting named excluded drivers was unnecessary and not required under the program. Conversely, some commenters argued for requiring the reporting of

named excluded driver data. While the Department is aware that one of the implementing agencies believes that named excluded driver information will enable it to achieve what it has determined to be an objective of the legislation, the Department is also aware that the insurance industry, including through the working group, has objected to the required reporting of named excluded driver information as being unnecessary and burdensome. As a result of these differing views, the Department has decided to seek legislative clarification on whether the named excluded driver information should be required in the implementation of the program. In the meantime, however, the Department encourages insurers to report named excluded driver information. Concomitantly, the Department has decided at this time that named excluded drivers who are not offered coverage under the insurance policy are not to be considered within the definition of *listed driver* and as such, are not required to be reported to the vendor under adopted §§5.604(c) and (c)(4), 5.607(e)(2) and (4) – (6), and 5.608(d)(4). To clarify this exclusion, the Department has included language in the adopted §5.602(14) definition of *listed driver*, which has been added as a result of other comments, to provide that a *listed driver* is a *driver listed on a personal automobile insurance policy, not including a named excluded driver to whom no coverage is offered under the insurance policy*. The criteria for reporting such information will be outlined in the user guide.

Many commenters argued that the 98 percent match rate is unobtainable and unreasonable at the onset of the program. They claimed that the highest required rate in other states is 92 percent and that the industry average is 75 – 80 percent. The

Department believes that a 98 percent match rate is obtainable due to the matching criteria and methods; however, the Department will postpone the 98 percent match rate requirement until January 1, 2010. Alternatively, an interim 95 percent rate will be required beginning January 1, 2008. Insurers will be responsible for providing accurate data to ensure that their insurance policy records match to a registered vehicle. In addition to cleaning up the data, the initial error correction and database clean-up procedure should also identify and eliminate those vehicles and/or policies that are not required to be included as a match for purposes of the program. Additionally, matching is not based solely on directly matching each piece of data for an entire insurance policy record. Rather, the program will rely on both direct matches and partial matches. For the database system, the vendor will develop and use cascading data matching algorithms that are designed to analyze possible, but not exact, matches and determine if it is more likely than not that a vehicle matches with the insurance policy in question. Under the web services program, the web services insurer is required to develop a similar algorithm, but may be able to refine the algorithm more to fit its particular set of data. The additional information required by the program is designed to increase match rates. The Department notes that Utah, Colorado, and New Mexico are currently close to meeting a 98 percent match rate. However, the Department recognizes that the optimal match rate may need to be achieved over a period of time and, based on comments, has changed proposed §§5.605(b) and 5.606(g) as adopted to require a match rate of 95 percent by January 1, 2008, with an increase to a 98 percent match rate by January 1, 2010.

Commenters expressed concern that the March 31, 2007 requirement to commence reporting data in the database system provided insufficient preparation time due to insurer staff limitations and other insurer projects. One commenter estimated that it could take 3,200 hours of programming time to comply with program requirements. Additionally, commenters were concerned that the March 31, 2007 date did not comply with the SB 1670 mandate that the rules and user guide be in place for at least seven months before full implementation of the program was required. Conversely, other commenters stated that they could be ready to begin reporting on or before January 1, 2007. The Department disagrees with the assertion that the requirement to begin data reporting equates to the full implementation of the program. The Department believes that full implementation will occur when the program is ready for use by the end users. The Department does recognize that a substantial amount of resources may be required for some insurers to develop the required reporting program and that those insurers may have limited staff. As such, the Department has established June 30, 2007, as the new database system reporting requirement deadline in adopted §5.604(b). In conjunction with this change, the Department has also changed proposed §5.609 as adopted to adjust when new insurers and insurers' managing general agents (MGA) delegated under §5.609 must begin submitting data under the new sections §§5.601 – 5.611.

In both the database and web services systems the insurers will be responsible for evaluating the data errors, communicating data errors to their policyholders, and making any corrections that are possible. Some commenters were concerned about the

potentially significant error correction costs. Other commenters were concerned that the proposal specified the timing, frequency, and manner of the required policyholder error correction communication. Commenters argued that insurers and agents know best how to communicate with customers, that the requirements added an unnecessary expense, and that, historically, such notices had generated limited response in other states. The Department is aware that the cost of error correction may indeed be significant, especially at the onset of the program. In consideration of these comments, the Department has modified proposed §§5.605(e), 5.606(f), and 5.607(f) as adopted to require only one error notice be sent to the policyholder and to allow that notice to be in a form chosen by the insurer. The proposal cost note recognized that, based on experience in other states, initial error rates of 20 percent could reasonably be expected. Such error rates could result in thousands to hundreds of thousands of error notices and additional communications between insurers and their customers for each insurer. To reduce matching errors and their associated costs, the program requires several types of insurer data for use in cascading matching algorithms to increase the match rate. It should also be noted that the adopted sections do not require the insurer to take additional efforts to correct data beyond communicating errors to their policyholders and updating their records when, and if, the policyholder provides the insurer additional information. Therefore, based on comments and the anticipated costs to insurers, the Department has changed proposed §§5.605(e), 5.606(f), and 5.607(f) with respect to the frequency and manner of providing error notices to customers. Under the adopted sections the insurer will be required to provide a single notice to the

insured in a manner of the insurer's choosing. The database insurer will be required to communicate a request to the policyholder to provide confirming or corrected information within 10 calendar days after receiving the error notice from the vendor. The web services insurer will be required to communicate a request to the policyholder to provide confirming or corrected information within 10 calendar days after discovering the error. The form of communication is not specified in the adopted sections, but is left to the insurer's discretion. The Department and vendor may review these notices during the auditing process. The insurer will not be required to provide additional error notices; however, the insurer may provide additional notices both to attempt to boost the insurer's match rate and/or avoid customer inconvenience. Because of the changes in the frequency and manner of the required communications, the Department has also made several nonsubstantive grammatical and other editorial changes to proposed §§5.605(e) and 5.606(f) as adopted.

A commenter asked for clarification that §5.605(g) meant that the vendor will be sending verification transactions to insurers as part of the program. The commenter suggested clarifying the subsection by changing the language of this subsection to read *[e]ach database insurer must assist the vendor in auditing the database program*. The Department declines to make the suggested change. The vendor will be reporting some verification transactions to the insurer to confirm the efficiency and reliability of the cascading data matching system. To the extent the vendor needs to confirm a cascading match, the vendor will be required to request such confirmation from the insurer. However, in reviewing proposed §5.605(g), the Department has determined

that the last sentence of that subsection is not a requirement related to confirming cascading data matching, but instead is a statement describing cascading data matching and therefore is more appropriately included in the definition of *cascading data matching*. As such, the Department has removed the sentence *cascading data matching may not result in a 100 percent match of all fields, but a match may be made with a reasonable degree of accuracy* from proposed §5.605(g) as adopted and added the sentence to the definition of *cascading data matching* in proposed §5.602(2) as adopted.

A commenter requested that database insurers have access to TxDOT and DPS data containing registered vehicles and their vehicle identification numbers (VIN) as part of the database error correction process. The Department declines to make this a part of the database program. Some TxDOT information will be available to web services insurers to allow them to perform data cleaning and matching functions that are necessary for compliance with the rule. It is not clear why an insurer would need to duplicate the efforts of the vendor in the database system and, as such, delivery of TxDOT data is not part of the database system. However, as DPS data will not be part of the web services system data clean-up process, the Department has also changed proposed §5.606(f)(5) as adopted to remove the reference to DPS data.

Also with respect to error correction, a commenter requested that the Department add to the rule a statement that the vendor will send error notices to an insurer's delegated managing general agent (MGA) under adopted §5.609(a). The Department agrees to make this change in proposed §§5.605(e); 5.606(f); and 5.608(e), (f), and (g)

as adopted. Additionally, for clarification purposes, the Department has also included a definition of the term *delegated MGA* in adopted §5.602(8): *a Department licensed managing general agent operating on behalf of an insurer through a delegation contract with that insurer under §5.609(a) of this subchapter (relating to Delegation and New Insurers)*. The Department has changed §§5.605(e); 5.606(f); and 5.608(e), (f), and (g) to clarify that error correction and TxDOT file data information will be sent to both the insurer and its designated MGA. The Department, however, has not added the term *delegated MGA* to every reference to *insurer* in adopted §§5.601 – 5.611, because adopted §5.609(a) clearly states that the delegated MGA is jointly and severally responsible for meeting the insurer's program requirements. As such, if the requirement applies to the insurer, then the requirement applies to the delegated MGA. However, the comment indicates that this relationship was not definitive in the proposal. Therefore, to further clarify that the delegated MGA will stand in the place of the insurer with respect to the requirements of §§5.601 – 5.611, the Department has added to the first sentence of proposed §5.609(a) as adopted the statement that *to the extent an insurer has contractually delegated any requirement of §§5.601 – 5.611 to an MGA, the MGA shall be deemed an insurer for the purposes of §§5.601 – 5.611*.

Also as to delegated MGAs, a commenter inquired if an insurer could delegate to more than one MGA. The Department has made a change to proposed §5.609(a) to clarify that this is allowed. The Department notes that it is the responsibility of the insurer and MGAs to clearly delineate insurance policy program responsibilities in a delegation agreement or potentially become jointly and severally responsible for

compliance on all of the insurer's policies. Further, a commenter requested that newly appointed MGAs be treated as new insurers so that data they are responsible for submitting would not be due for 30 days. The Department agrees with this change. To effect this change, the Department has added §5.609(d) to the adopted text to state that an MGA has the same reporting options as an insurer and that an MGA subsequently contracting with an insurer must begin reporting in the same manner as an insurer under adopted §5.609(b) and (c). The Department has also made a nonsubstantive correction to the reference to the title of §5.606 in proposed §5.609(b) as adopted.

A commenter argued that the penalty provisions are inappropriately severe and requested that a *willful or knowing* requirement be added to proposed §5.610. The Department disagrees that the penalty provisions are overly harsh. The penalty provisions are established by statute. The standard for enforcement under each statute is established by that particular statute and cannot be modified by rule. However, to clarify how the provisions will operate procedurally, the Department has changed proposed §5.610(a) as adopted to read *the commissioner may after opportunity for notice and hearing, discipline an insurer or license holder under the Insurance Code Chapters 82, 83, and 84, and any other applicable law if the commissioner determines the insurer or license holder is in violation of, or has failed to comply, with any of the requirements of §§5.601 – 5.611.*

3. HOW THE SECTIONS WILL FUNCTION. Adopted §5.601 states the basic purpose and scope of the new division, §§5.601 – 5.611. Adopted §5.602 provides definitions

for certain terms used in the division. Adopted §5.603(a) describes that the Financial Responsibility Verification Program Guide and User Manual (user guide), established in accordance with SECTION 4 of SB 1670 (Acts 2005, 79th Leg., R.S., chap. 892, SB 1670 sec. 4), will provide technical guidance to insurers on how to comply with the requirements and procedures specified in §§5.601 – 5.611. The user guide specifications are subject to change based on technology or program experience. Such changes to the user guide shall not affect the substantive requirements of this division. Adopted §5.604 sets forth the reporting requirements for insurers using the database program, including specifying that data must be reported weekly, that reporting should commence no later than June 30, 2007, and the types of data that must be reported. Adopted §5.605 specifies required match rates and data error correction requirements and procedures for insurers using the database program, including the response time for general data submission errors, and directs the insurer to make at least one attempt to communicate non-matching policy errors to the policyholder within 10 calendar days of receiving the error notice. Section 5.605 also establishes that insurers with less than 1,000 policies are required to work with the vendor to establish alternate reporting procedures. Adopted §5.606 establishes the development time frame and submission requirements for insurers using the web services program. Section 5.606 also establishes a submission review and appeal process. Section 5.606 further sets forth web services system testing and error correction procedure requirements for web services insurers, including that the insurer must make at least one attempt to communicate this error to the policyholder within 10 calendar days of discovering the

error. Adopted §5.607 establishes the web services system requirements for insurers electing to use the web services program. These requirements include that a web services insurer must design, develop, and maintain a web services system; design a matching program algorithm that can match specified insurer information to vendor supplied TxDOT data; comply with XML transmission standards and protocols; and comply with specified procedures relating to data confidentiality and security standards. Adopted §5.608 specifies the web services program performance requirements for insurers electing to use the web services program. These requirements include accepting and responding to insurance verification inquiries from the vendor within certain time frames, specifying required formats for responses and data submitted with the responses, and specifying required program match rates and procedures for performing ongoing verification program matches. Adopted §5.609 provides that insurers may delegate certain aspects of program compliance, but not responsibility for compliance, to one or more managing general agents (MGA). Section 5.609 also sets forth how insurers and MGAs entering the Texas market after the effective date of this adoption must comply with this division. Adopted §5.610 references Insurance Code provisions applicable to persons violating the adopted sections and specifies that all persons are subject to criminal penalty for unauthorized disclosure or use of program information under Transportation Code §601.454(d). Adopted §5.611 describes the voluntary test program and sets forth the means for participating insurers to test the program and obtain approval from the implementing agencies for use in Texas.

4. SUMMARY OF COMMENTS AND AGENCY'S RESPONSE.

General: Commenters were concerned that privacy issues are not adequately addressed in the proposed rule.

Agency Response: The Department and other implementing agencies take privacy issues very seriously and expect compliance with all applicable privacy laws. The program vendor will be contractually required to maintain the data and operate the system in a manner that will sufficiently protect the privacy of motor vehicle owners and drivers and safeguard the security and integrity of insurance company information. The program vendor and all program users are also subject to applicable privacy laws and associated penalty provisions, including the criminal penalty provisions set forth in Transportation Code §601.454(d).

General: A commenter argued that insurance data matching systems are expensive to set up and maintain for states, insurers, and the public. The commenter further argued that there is no conclusive and undisputed evidence that they reduce uninsured driving and that the program is, thus, not cost effective.

Agency Response: To the extent that this comment goes to whether Texas should have a verification program, the Texas Legislature determined that it should when it adopted SB 1670, 79th Legislature, Regular Session. If the comment goes to the type of program that should be implemented, the Department disagrees with this assertion. The Department and other implementing agencies reviewed alternative systems and existing programs in other states. Following that review, the Department and the other implementing agencies established the program as being most likely to accomplish the

statutory goals set forth in Transportation Code §601.452(a), including reducing the number of uninsured motorists and being cost effective. However, the Department recognizes that changes in technology may offer better solutions in the future. In anticipation of this possibility, adopted §5.611 sets out a procedure by which insurers may test, demonstrate, and obtain implementing agency approval as an alternative to the current program systems.

General: Several commenters argued that the vendor should be selected before the adoption of the rule.

Agency Response: The Department disagrees that the vendor must be selected prior to the adoption of these rules. SB 1670 does not require that the vendor be selected before the rule is adopted. Additionally, Transportation Code §601.453(a) does not list development of rules within the scope of work the vendor is required to perform for the program. The vendor is also not required to select the type of information that insurers can be required to provide in these rules. Rather, Transportation Code §601.454(b) states that the vendor will be required to use the information that is determined to be necessary by the implementing agencies to carry out Transportation Code, Chapter 601 Subchapter N. This adoption sets forth insurer information that the implementing agencies have determined to be necessary to carry out Transportation Code, Chapter 601 Subchapter N. Finally, §601.453(c) states that the vendor's contract cannot have more than a five year term, but Transportation Code, Chapter 601 Subchapter N, does not have a corresponding time limitation on the rules that are to be adopted under that subchapter or a requirement that rules must be changed for each future vendor.

General: One commenter was concerned that other state agencies had not jointly published their rules as required by Transportation Code §§601.452(b) and 502.1715.

Agency Response: The Department disagrees that Transportation Code §§601.452(b) and 502.1715 require the implementing agencies to join in a single rule adoption, to adopt the same rules simultaneously, or even for each agency to adopt rules. A joint adoption by four agencies would be a cumbersome project and could require agencies to adopt rules unrelated to their functional areas and potentially exceeding their legal authority. SB 1670, SECTION 4, thus clarifies the rule requirement when it states that *the agencies responsible for implementing Subchapter N, Chapter 601, Transportation Code, as added by this Act, shall adopt rules and establish and publish a user guide clearly specifying requirements and procedures for providing information under the verification program under that subchapter not later than seven months before the full implementation of the program.* The Department considers this reference to *the agencies responsible* to be a legislative directive that each agency is to adopt rules that are necessary and required for that agency to administer its responsibilities under the program. This directive is substantively different from SB 1670 references to the *implementing agencies*. As such, *jointly* is an instruction that the implementing agencies shall cooperate in determining their individual agency responsibilities. The implementing agencies may adopt rules as necessary to administer their individual agency program requirements. Moreover, none of the other implementing agencies objected to the Department's proposal.

General: A commenter objected that the implementing agencies will determine when it is feasible to include commercial policies and wanted insurers to be involved in the decision.

Agency Response: SB 1670, SECTION 4, specifically requires the implementing agencies to determine when it is feasible to implement the program for vehicles covered under a commercial insurance policy. As stated in this adoption, commercial policy requirements will be added by rule at a later date through a separate rulemaking process. All persons will have an opportunity to comment on that rule proposal.

Public Benefit/Cost Note: Commenters were concerned that the Department failed to accurately estimate the costs large insurers will incur in designing programs to collect the required data for submission to the vendor. Several commenters argued that 80 hours of implementation time and \$500 yearly operational costs greatly underestimate the time and costs that insurers will incur to implement and support the program. A commenter estimated up to 3,200 hours of implementation time, \$1.3 million implementation costs, and \$340,000 yearly operational costs. Conversely, some commenters indicated the \$80,000 amount and lower maintenance amounts were in line with their expectations.

Agency Response: The program applies to insurers issuing a few thousand policies to several million policies in the state of Texas. The \$80,000 and \$1.3 million dollar amounts stated in the cost note in the Department's notice of proposal, published in the September 8, 2006 edition of the *Texas Register* (31 TexReg 7226, 7228), were examples of costs that had either been provided to the Department or provided in

testimony to the Texas Legislature. They were not stated as exact figures for this program, but were used to buttress the Department's program cost note estimate range in the preceding sentence. That sentence reads: *total probable economic costs to each insurer to comply with this proposal will vary based on whether the insurer opts to participate in the database program or the web services program and is estimated to be within the range of several thousand to several million dollars per insurer depending on several factors discussed in this cost note.* (cost note, 7228). Those factors were summarized in that same paragraph as *an insurers costs will depend on the insurer's existing data systems, existing staff, number of policyholders, and quality of data.* (cost note, 7228) The Department further elaborated with respect to the cost of error correction that it had received information based on experience in other states that initial policy error rates of 20 percent could reasonably be expected. Such error rates would result in thousands to hundreds of thousands of error notices and additional communications between insurers and their customers. The cost note, however, did not simply give broad estimates but identified sources of costs and associated employee costs for the design, maintenance and error correction phases of the program. These sources of costs and job functions were not disputed. As to the cost of employees performing certain tasks, those values were based on the average wage for that type of job for the industry as published by the Texas Workforce Commission. If an insurer chooses to pay a different wage for a job type, that is a business choice for that insurer and not a cost that can be reflected in a cost note. Finally, several commenters, primarily representing small or medium sized insurers, stated that the cost note was in

line with their expectations. As such, the Department does not believe the cost note was incorrect or understated.

Public Benefit/Cost Note: Several commenters argued that the legislative goal of the program was not insurance claim confirmation.

Agency Response: The Department agrees that this is not a stated goal of the legislation and the program is not intended or contemplated to confirm insurance coverage for claims processing purposes. As published in the cost note in the Department's notice of proposal published in the September 8, 2006 edition of the *Texas Register* (31 TexReg 7226, 7228), the statement *reduction of ... and the expense and delay in resolving personal automobile insurance claims* is an opinion that a potential benefit of reducing the number of uninsureds might also be to reduce the expense and delay in resolving personal automobile insurance claims.

§5.602: A commenter suggested a definition for commercial automobile insurance policies.

Agency Response: The Department declines to make the suggested change. The implementing agencies will determine when it is feasible to add commercial insurance policies to the program and at that time the implementing agencies will define the types of commercial motor vehicle insurance policies to be covered by the program. Additionally, the Department does not believe that this definition is necessary for the implementation of the adopted sections.

§§5.602(2) and 5.605(g): A commenter asked for clarification that §5.605(g) meant that the vendor will be sending verification transactions to insurers as part of the program.

The commenter suggested clarifying the subsection by changing the language of this subsection to read *each database insurer must assist the vendor in auditing the database program.*

Agency Response: The Department declines to make the suggested change. The vendor will be reporting some verification transactions to the insurer to confirm the efficiency and reliability of the cascading data matching system. To the extent the vendor needs to confirm a cascading match, the vendor will be required to request such confirmation from the insurer. However, in reviewing proposed §5.605(g), the Department has determined that the last sentence of that subsection is not a requirement related to confirming cascading data matching, but instead is a statement describing cascading data matching and therefore is more appropriately included in the definition of *cascading data matching*. As such, the Department has removed the sentence *[c]ascading data matching may not result in a 100 percent match of all fields, but a match may be made with a reasonable degree of accuracy* from proposed §5.605(g) as adopted and added the sentence to the definition of *cascading data matching* in proposed §5.602(2) as adopted.

§§5.602(11) and (15) and 5.607(a): Several commenters questioned whether SB 1670 authorizes the program to verify financial responsibility for both owners and drivers of motor vehicles. Some commenters also questioned whether the driver of a motor vehicle could use his personal insurance to satisfy the requirements of the Texas Motor Vehicle Safety Responsibility Act and the program when the owner of the vehicle does not have appropriate motor vehicle insurance. Another commenter argued that SB

1670 contemplated only whether owners of motor vehicles had established financial responsibility, and did not expand the program to incorporate operators of motor vehicles. The commenter noted that the Legislature could have crafted the bill to include both owners and operators had it chosen to do so.

Agency Response: The Department disagrees that SB 1670 limits the program solely to verifying whether the registered owner of a motor vehicle has established financial responsibility for that vehicle. Rather, the program extends to verifying compliance with the Texas Motor Vehicle Safety Responsibility Act as indicated by the SB 1670 requirement that the program be most likely to employ a method of compliance that improves public convenience. Transportation Code §601.051(1) provides that a person may operate a motor vehicle if the person has established financial responsibility for the vehicle through an insurance policy that complies with Transportation Code, Chapter 601, Subchapter D. Transportation Code §601.071 provides that acceptable insurance may be in the form of an owner or operator's policy. To the extent that an operator is entitled under law to comply with the Texas Motor Vehicle Safety Responsibility Act via an operator's policy, the convenience of the program would be diminished if the program did not provide a means for the operator to have that compliance verified. This rule does not change the requirements of how a person can establish financial responsibility under the Texas Motor Vehicle Safety Responsibility Act. This adoption refers herein to the term *driver* rather than *operator*, but as used herein have the same meaning. The Department has revised proposed §5.602 definitions of *event based process* and *match rate* and §5.607, and adopted them without references to the term

driver and/or *motorist* in order to clarify that the scope of the program applies to verification of coverage and also to indicate that the program responses will be to specific insurance verification inquiries.

§§5.602(14), 5.604(c), 5.607(e), and 5.608(d): Commenters were concerned that the term *covered individuals* in proposed §5.604(c) could be confusing because, under a standard personal automobile insurance policy, any authorized individual could be covered. A commenter recommended changing *covered individuals* to *listed individuals*.

Agency Response: The Department agrees that clarification is needed. However, it is the Department's position that changing the subsection to include *listed driver* would provide sufficient clarification, and the word *driver* is consistent with the required reporting fields specified in §§5.604(c), 5.607(e), and 5.608(d) that reference *driver*. In accordance with the purpose of SB 1670, it is not the Department's intent to address all possible coverage scenarios, but rather to require the necessary information to identify those persons associated with the insurance policy. The use of the term *covered* in the proposed §5.604(c) was an inadequate expression of this purpose. Substituting the term *listed driver*, meaning *a driver listed on a personal automobile insurance policy*, in place of *covered individual* should clarify this reporting requirement and provide the vendor with sufficient information for more efficient data matching, including cascading data matching. Additionally, while it may be inferred from the context of the proposal, a statement limiting this information to policies in force in Texas is necessary to clarify the insurance policy information required to be submitted to the vendor under §5.604(c).

Therefore, the Department has changed proposed §§5.604(c) and (c)(4), 5.607(e)(2) and (4) – (6), and 5.608(d)(4) as adopted, to require the insurer to report each *listed driver*. These changes clarify the reporting requirement and confirm that the reporting requirement is part of the program and will also provide the necessary information for the vendor to carry out the program. In connection with this change, the term *listed driver*, meaning a *driver listed on a personal automobile insurance policy*, has been added as a definition in adopted §5.602(14). For reasons stated in the following comment and response the definition of *listed driver* does not include *named excluded drivers*. Also the descriptive phrase *in Texas* has been added to adopted §5.604(c) to clarify that the required insurance policy information to be reported by the insurer to the vendor are those policies that are *in force in Texas*. In connection with these changes the Department has made nonsubstantive grammatical changes to these subsections.

§5.602(14): In related comments, some commenters questioned whether named excluded driver data would have to be reported under the proposed text. Some commenters argued that reporting named excluded drivers was unnecessary and not required under the program. Conversely, some commenters argued for requiring the reporting of named excluded driver data.

Agency Response: While the Department is aware that one of the implementing agencies believes that named excluded driver information will enable it to achieve what it has determined to be an objective of the legislation, the Department is also aware that the insurance industry, including through the working group, has objected to the required reporting of named excluded driver information as being unnecessary and

burdensome. As a result of these differing views, the Department has decided to seek legislative clarification on whether the named excluded driver information should be required in the implementation of the program. In the meantime, however, the Department encourages insurers to report named excluded driver information. Concomitantly, the Department has decided at this time that named excluded drivers who are not offered coverage under the insurance policy are not to be considered within the definition of *listed driver* and as such, are not required to be reported to the vendor under adopted §§5.604(c) and (c)(4), 5.607(e)(2) and (4) – (6), and 5.608(d)(4). To clarify this exclusion, the Department has included language in the adopted §5.602(14) definition of *listed driver*, which has been added as a result of other comments, to provide that a *listed driver* is a *driver listed on a personal automobile insurance policy, not including a named excluded driver to whom no coverage is offered under the insurance policy*. The criteria for reporting such information will be outlined in the user guide.

§§5.602(15) and 5.605: Several commenters were concerned that the data matching process and criteria were not defined.

Agency Response: The Department believes the process is adequately described in the adopted sections. Match rate is defined in adopted §5.602(15) as *the percentage of insurance policy records matched to vehicles, divided by the total number of all insurance policy records*. Matching will be done either by the vendor in the database system or by the web services insurer in the web services system. Matches can be established through direct matches of fields, such as VINs, and through the use of

cascading data algorithms. The algorithms will be developed either by the vendor for the database system or by the insurer for the web services system.

§5.602(17): A commenter was concerned that the reference to stationary mobile home trailers in the definition of *personal automobile insurance policy* could include stationary mobile homes covered under automobile insurance policies and suggested a change to the definition.

Agency response: The Department declines to make the suggested change. The reference to trailers is based on the definition of a *motor vehicle* in Transportation Code §601.001(5). The Department considered revising the definition of a *personal automobile insurance policy*, but in considering all aspects of the terminology was unable to create a more satisfactory definition than the proposed definition of *personal automobile insurance policy*. The issue raised in this comment may be limited to some extent because it will depend on the number of mobile homes that are covered under a motor vehicle insurance policy. To the extent such policies are reported, the Department expects that issues related to those policies will be resolved during the data clean-up phase of the program.

§§5.602(23); 5.603; 5.604(c) and (e); 5.605(d) and (e); 5.506 (c), (d), (e) and (f); 5.607(j); and 5.608(j) and (k): The Department received a comment questioning the Department's compliance with the Administrative Procedures Act (APA), Government Code, Chapter 2001. More specifically, the commenter argued that since the user guide creates requirements that insurers could be sanctioned for violating, the user guide must be adopted separately as a rule or as part of the proposed rule.

Additionally, the commenter objected to the proposal because a completed user guide was not available for review at the same time as the proposed rule and, thus, claimed that proper notice of the rule was not given pursuant to the APA. Several other commenters also complained about the lack of a user guide for review and comment before the adoption of the proposal.

Agency Response: The Department disagrees with these assertions and argues that they are contrary to the language of SB 1670. Under SB 1670, the Legislature specifically granted rulemaking authority to administer, or carry out, Transportation Code, Subchapter N, in Transportation Code §§601.452(b) and 502.1715(b). However, while SB 1670 provides clear instruction to adopt rules, it does not state that the user guide is to be adopted by rule or as a rule. Instead, SB 1670, SECTION 4, provides clear instruction that *the agencies responsible for implementing Subchapter N, Chapter 601, Transportation Code, as added by this Act, shall adopt rules and establish and publish a user guide clearly specifying requirements and procedures for providing information under the verification program under that subchapter.* As such, the user guide is not a rule, or required to be part of the rules to be adopted to administer, or to carry out, Transportation Code, Chapter 601, Subchapter N.

Transportation Code §601.452 sets forth the requirement to establish the program. Transportation Code §601.453 describes the program agent (herein called the vendor) and the scope of the vendor's contract. Transportation Code §601.454 requires insurance companies to submit data determined by the implementing agencies as necessary for the vendor to carry out the program. This adoption sets forth the

insurance policy information that the implementing agencies have determined will be necessary for the vendor to carry out the program and implements the requirement that the insurer must provide that information to the vendor. The user guide does not create these requirements.

The user guide will contain references to statutes of this state and these adopted sections. However, to that end, the user guide is just a reference tool because the user guide cannot alter the referenced statutes or the adopted sections. What the user guide will do is explain how the information required under this adoption is to be submitted. As such, while the user guide will have general applicability to insurers, it is questionable whether, under Government Code §2001.003(6), that the user guide constitutes a *state agency statement* that either *implements, interprets, or prescribes law or policy; or describes the procedure or practice requirements of a state agency*. The Department's interpretation is that, as a document, the user guide does not meet the §2001.003(6) definition of a *rule*.

As to the question of opportunity to comment on the user guide, the Department disagrees that this is a requirement under SB 1670 or the APA. The user guide is not a rule. It does not create the obligation to submit data to the vendor. Neither the APA nor SB 1670 requires public comment on the user guide. However, although not required, the Department has solicited comments from the public and users on a draft user guide, including publishing notice of a draft user guide for comment in the October 20, 2006 issue of the *Texas Register* (31 TexReg 8766).

In summary, the Legislature identified the rules to be adopted and specifically did not require the user guide to be adopted by reference or as a separate rule. Further, the user guide does not fit within the scope of a *rule* as defined by Government Code §2001.003. The adopted sections administer the program, including specifying the information that the implementing agencies have determined to be necessary for the vendor to carry out the program and implementing the requirement for the insurers to submit that data to the vendor. The user guide provides guidance for complying with those sections.

While the Department disagrees with the commenter that the user guide must be adopted as a rule and/or be subject to public comment for the preceding reasons, the Department has changed proposed §5.603 in this adoption to clarify that *the user guide established in accordance with SECTION 4 of SB 1670 (Acts 2005, 79th Leg., R.S., chap. 892, SB 1670 sec. 4) will provide guidance to insurers on how to comply with the requirements and procedures specified in §§5.601 – 5.611*. Additionally, as a result of this change, the Department has changed the definition in proposed §5.602 as adopted to define the term *user guide* instead of the term *manual*. The Department has also changed proposed §§5.604(c) and (e); 5.605(d) and (e); 5.606(c), (d), (e) and (f); and 5.608(j) as adopted, and has also deleted proposed §§5.607(j) and 5.608(k) in their entirety, to remove proposed references to manual requirements that the Department has determined are no longer necessary because of the change to §5.603 as adopted.

§5.603: Several commenters suggested that procedural details would be more appropriately placed in the user guide and wanted the rule to allow for more flexibility.

Agency Response: The Department declines to make any changes based on this comment. As discussed in the prior comment, the user guide and the adopted sections fulfill different functions with respect to the program. As such, it is not simply a matter of making one flexible and the other detailed. The adopted sections set forth administrative requirements, specify the information that must be submitted to the vendor under the program, and establish the requirement to submit that information. The user guide instructs insurers as to the format and the procedure for submitting the information to the vendor.

§5.603: A commenter wanted the opportunity for notice and comment before any future changes are made to the user guide. Another commenter argued that the user guide should be able to override any specific details in the adopted sections if the changes were agreed to through a consensus among the insurers and agencies.

Agency Response: The Department declines to make any changes based on this comment. As previously stated, the user guide is not a rule, and SB 1670 does not require public comment on the user guide or a consensus between insurers and the implementing agencies. Additionally, adopted §5.603 makes it clear that any changes made to the user guide cannot alter the requirements in §§5.601 – 5.611. However, the Department anticipates informally soliciting public comments on any future changes to the user guide that are substantive and/or extensive in nature.

§§5.604(b) and 5.609: Commenters expressed concern that the March 31, 2007 requirement to commence reporting data in the database system provided insufficient preparation time due to insurer staff limitations and other insurer projects. One

commenter estimated that it could take 3,200 hours of programming time to comply with program requirements. Additionally, commenters were concerned that the March 31, 2007 date did not comply with the SB 1670 mandate that the rules and user guide be in place for at least seven months before full implementation of the program was required. Conversely, other commenters stated that they could be ready to begin reporting on or before January 1, 2007.

Agency Response: The Department disagrees with the assertion that the requirement to begin data reporting equates to the full implementation of the program. The Department believes that full implementation will occur when the program is ready for use by the end users. The Department does recognize that a substantial amount of resources may be required for some insurers to develop the required reporting program and that those insurers may have limited staff. As such, the Department has established June 30, 2007 as the new database system reporting requirement deadline in adopted §5.604(b). In conjunction with this change, the Department has also changed proposed §5.609 as adopted to adjust when new insurers and insurers' managing general agents (MGA) delegated under §5.609 must begin submitting data under the new sections §§5.601 – 5.611.

§5.604(c): Some commenters opined that weekly data submissions are unwieldy and noted technological difficulties and time constraints with weekly reporting. These commenters suggested a bi-weekly or monthly data reporting requirement. Conversely, some commenters were satisfied with weekly reporting and/or wanted an allowance to increase the frequency to daily reporting to attain accuracy.

Agency Response: The Department declines to make any of these suggested changes. A goal of the program is to minimize public and user inconvenience that could result from unmatched vehicles due to lack of data timeliness, especially for new vehicles. The weekly submission requirement in the adopted §5.604(c) should accomplish that goal while not placing too great a burden on insurers. More frequent submissions, however, were not considered in the proposal and may be unduly burdensome on insurers.

§5.604(c): Many commenters stated that the database program requires excessive and/or non-useful information. Some commenters suggested allowing reporting of alternate data. Conversely, some commenters were generally satisfied with the data requirements and felt the required data will lead to a better match rate.

Agency Response: The Department and the other implementing agencies have determined the information to be necessary for the vendor to carry out the program. As stated in a prior comment response, insured driver information may be useful in verifying compliance with the Texas Motor Vehicle Safety Responsibility Act under Transportation Code §§601.051 and 601.071. Additionally, more information will assist the vendor in developing and implementing cascading matching algorithms that will enhance match rates and match rate accuracy. Limited information would result in a lower match rate. Increased program match rates through cascading matching algorithms should improve the public convenience by reducing the number of individuals who may be unnecessarily identified as uninsured. In addition, an increased match rate will reduce insurer error correction expenses due to less error reports.

5.604(c): A commenter was concerned about how international driver's licenses would work within the program. The commenter also questioned if the program would allow for alpha prefixes on insurance policies issued through various insurance programs.

Agency Response: The user guide will provide guidance to insurers with respect to how this type of data can be submitted to the vendor so that the vendor can carry out the program.

§5.604(c) A commenter recommended removing coverage dates, or limiting coverage dates to the current policy term.

Agency Response: The Department declines to make a change. Coverage date information will be useful in establishing the accuracy of the system, particularly with respect to any lag in reporting. As for the scope of coverage dates, the information that is requested is for the current policy term.

§5.605: Some commenters questioned how the program would account for vehicles insured in Texas, but not registered in Texas, or conversely registered in Texas, but not insured in Texas.

Agency Response: Vehicles insured in Texas, but not registered in Texas, will have to be dealt with through the error correction process and may require information from the owner to clarify this situation. Vehicles registered in Texas, but not insured in Texas, will be identified during the ongoing verification process and handled accordingly by the vendor.

§§5.605 and 5.606(f)(5): A commenter requested that database insurers have access to TxDOT and DPS data containing registered vehicles and their vehicle identification numbers (VIN) as part of the database error correction process.

Agency Response: The Department declines to make this a part of the database program. Some TxDOT information will be available to web services insurers to allow them to perform data cleaning and matching functions that are necessary for compliance with the rule. It is not clear why an insurer would need to duplicate the efforts of the vendor in the database system and, as such, delivery of TxDOT data is not part of the database system. However, as DPS data will not be part of the web services system data clean-up process, the Department has also changed proposed §5.606(f)(5) as adopted to remove the reference to DPS data.

§5.605(b) Many commenters argued that the 98 percent match rate is unobtainable and unreasonable at the onset of the program. They claimed that the highest required rate in other states is 92 percent and that the industry average is 75 – 80 percent.

Agency Response: The Department believes that a 98 percent match rate is obtainable due to the matching criteria and methods; however, the Department will postpone the 98 percent match rate requirement until January 1, 2010. Alternatively, an interim 95 percent rate will be required beginning January 1, 2008. Insurers will be responsible for providing accurate data to ensure that their insurance policy records match to a registered vehicle. In addition to cleaning up the data, the initial error correction and database clean-up procedure should also identify and eliminate those vehicles and/or policies that are not required to be included as a match for purposes of

the program. Additionally, matching is not based solely on directly matching each piece of data for an entire insurance policy record. Rather, the program will rely on both direct matches and partial matches. For the database system, the vendor will develop and use cascading data matching algorithms that are designed to analyze possible, but not exact, matches and determine if it is more likely than not that a vehicle matches with the insurance policy in question. Under the web services program, the web services insurer is required to develop a similar algorithm, but may be able to refine the algorithm more to fit its particular set of data. The additional information required by the program is designed to increase match rates. The Department notes that Utah, Colorado, and New Mexico are currently close to meeting a 98 percent match rate. However, the Department recognizes that the optimal match rate may need to be achieved over a period of time and, based on comments, has changed proposed §§5.605(b) and 5.606(g) as adopted to require a match rate of 95 percent by January 1, 2008, with an increase to a 98 percent match rate by January 1, 2010.

§5.605(b): A commenter requested an exception to the 98 percent match rate for insurers that write non-standard automobiles and cannot perform VIN validation because these vehicle's VINs do not conform to Federal standards. Another commenter was concerned that specialty products having a non-standard VIN may result in a high error rate.

Agency Response: The Department does not believe an exemption is necessary for non-standard VIN because all data is not required to match to achieve a cascading data match and VIN are not an exclusive match criteria. As such, since the vendor will be

using multiple fields to match data through a cascading match, a non-standard VIN should not present a matching problem.

§5.605(b): A commenter suggested that the 98 percent match rate is too low.

Agency Response: The Department declines to increase the match rate because the Department is not aware of any state operating a similar insurance verification program currently reporting exceeding a 98 percent match rate.

§§5.605(e), 5.606(f), and 5.607(f): Some commenters were concerned about the potentially significant error correction costs. Other commenters were concerned that the proposal specified the timing, frequency, and manner of the required policyholder error correction communication. Commenters argued that insurers and agents know best how to communicate with customers, that the requirements added an unnecessary expense, and that, historically, such notices had generated limited response in other states.

Agency Response The Department agrees to change the proposed requirements as to the frequency and manner of policyholder error correction notices. The Department is aware that the cost of error correction may indeed be significant, especially at the onset of the program. In consideration of these comments, the Department has modified proposed §§5.605(e), 5.606(f), and 5.607(f) as adopted to require only one error notice be sent to the policyholder and to allow that notice to be in a form chosen by the insurer. The proposal cost note recognized that, based on experience in other states, initial error rates of 20 percent could reasonably be expected. Such error rates could result in thousands to hundreds of thousands of error notices and additional

communications between insurers and their customers for each insurer. To reduce matching errors and their associated costs, the program requires several types of insurer data for use in cascading matching algorithms to increase the match rate. It should also be noted that the adopted sections do not require the insurer to take additional efforts to correct data beyond communicating errors to their policyholders and updating their records when, and if, the policyholder provides the insurer additional information. Therefore, based on comments and the anticipated costs to insurers, the Department has changed proposed §§5.605(e), 5.606(f), and 5.607(f) with respect to the frequency and manner of providing error notices to customers. Under the adopted sections, the insurer will be required to provide a single notice to the insured in a manner of the insurer's choosing. The database insurer will be required to communicate a request to the policyholder to provide confirming or corrected information within 10 calendar days after receiving the error notice from the vendor. The web services insurer will be required to communicate a request to the policyholder to provide confirming or corrected information within 10 calendar days after discovering the error. The form of communication is not specified in the adopted sections, but is left to the insurer's discretion. The Department and vendor may review these notices during the auditing process. The insurer will not be required to provide additional error notices; however, the insurer may provide additional notices both to attempt to boost the insurer's match rate and/or avoid customer inconvenience. Because of the changes in the frequency and manner of the required communications, the Department also made

several nonsubstantive grammatical and other editorial changes to proposed §§5.605(e) and 5.606(f), as adopted.

§5.605(e): Some commenters argued that the vendor, not the insurers, should be responsible for notifying policyholders and correcting errors. Other commenters argued that policyholder error notices should come from the insurer.

Agency Response: The Department declines to change the requirement that the insurer notify policyholders regarding data errors. The program does not have sufficient funding at this time for the vendor to perform the policyholder error notification function. Further, the Department is not persuaded that consumers would be more likely to respond to a request for information from an unfamiliar vendor rather than from their own insurance company.

§§5.605(e); 5.606(f); and 5.608(e), (f), and (g): A commenter requested that the Department add to the rule a statement that the vendor will send error notices to an insurer's delegated MGA under adopted §5.609(a).

Agency Response: The Department agrees to make this change in proposed §§5.605(e); 5.606(f); and 5.608(e), (f), and (g) as adopted. Additionally, for clarification purposes, the Department has also included a definition of the term *delegated MGA* in adopted §5.602(8): *a Department licensed managing general agent operating on behalf of an insurer through a delegation contract with that insurer under §5.609(a) of this subchapter (relating to Delegation and New Insurers)*. The Department has changed §§5.605(e); 5.606(f); and 5.608(e), (f), and (g) to clarify that error correction and TxDOT file data information will be sent to both the insurer and its designated MGA. The

Department, however, has not added the term *delegated MGA* to every reference to *insurer* in adopted §§5.601 – 5.611, because adopted §5.609(a) clearly states that the delegated MGA is jointly and severally responsible for meeting the insurer's program requirements. As such, if the requirement applies to the insurer, then the requirement applies to the delegated MGA. However, the comment indicates that this relationship was not definitive in the proposal. Therefore, to further clarify that the delegated MGA will stand in the place of the insurer with respect to the requirements of §§5.601 – 5.611, the Department has added to the first sentence of proposed §5.609(a) as adopted the statement that *to the extent an insurer has contractually delegated any requirement of §§5.601 – 5.611 to an MGA, the MGA shall be deemed an insurer for the purposes of §§5.601 – 5.611.*

§5.606: Some commenters recommended deleting §5.606 because they were not aware of any insurer intending to use the web services program.

Agency Response: The Department declines to make the suggested change. This section sets forth a procedure for establishing the web services program on a timely basis. The Department believes the web services system is a workable solution and wants to leave this option available for those insurers who may choose to implement this option as a method of program compliance.

§§5.606 – 5.608: Several commenters felt the web services system was an inverse database system. Another commenter argued that the described web services program is too cumbersome and virtually impossible as an option.

Agency Response: The Department disagrees that the web services system is either a cumbersome or an impossible option. The systems are similar and they do rely on stored matched data. The web services system incorporates many of the same requirements as are placed on the program vendor through its contract, and the Department considers the web services system to be a workable solution. Additionally, both systems are designed to fit the needs of the users and respond to the same user inputs and produce the same user responses. The web services system will also allow an insurer to develop a separate matching algorithm that may better fit the web services insurer's data.

§§5.606 – 5.608: A commenter argues that the requirement for an insurer to begin compliance with the database system within 30 calendar days after discontinuing the web services system is a bar to attempting the web services system.

Agency Response: The Department disagrees. A web services insurer would essentially need to meet the same requirements as a new insurer under adopted §5.609. As such, an insurer discontinuing the web services system before June 1, 2007, would not need to begin reporting data before June 30, 2007. After June 1, 2007, the requirement would be 30 days. However, both systems require similar information and also that the information undergo a data clean-up process. As such, unless the web services insurer discontinues participation early in the process, some of these processes should have already been initiated, thus reducing the time required to meet program requirements.

§§5.606 – 5.608 and 5.611: Several commenters argued for replacing the web services system with the IICMVA web services program model. However, two commenters conceded that the IICMVA model is not ready for implementation in Texas at this time, and proposed that the pilot program would help get this model ready for Texas. Other commenters, however, argued against the IICMVA web services program model.

Agency Response: The Department declines to make this change. The adopted web services program is designed to function within the existing framework of data maintained by TxDOT and DPS equipment, as well as address DPS safety concerns. As in the proposal, adopted §5.611 also provides for voluntary participation in a test program that would use insurer provided key-data to provide verification of financial responsibility under the Texas Motor Vehicle Safety Responsibility Act. The Department, however, has amended proposed §5.611 so that it now indicates a path by which the test program can be tested and, if accepted by the implementing agencies, approved for use in Texas.

§5.609(a) A commenter asked if the rule would allow for delegation to multiple MGAs.

Agency Response: The Department has made a change to proposed §5.609(a) to clarify that this is allowed. The Department notes that it is the responsibility of the insurer and MGAs to clearly delineate insurance policy program responsibilities in a delegation agreement or potentially become jointly and severally responsible for compliance on all of the insurer's policies.

§5.609(b) and (c): A commenter requested that newly appointed MGAs be treated as new insurers so that data they are responsible for submitting would not be due for 30 days.

Agency Response: The Department agrees with this change. To effect this change, the Department has added §5.609(d) to the adopted text to state that an MGA has the same reporting options as an insurer and that an MGA subsequently contracting with an insurer must begin reporting in the same manner as an insurer under adopted §5.609(b) and (c). The Department has also made a nonsubstantive correction to the reference to the title of §5.606 in proposed §5.609(b) as adopted.

§5.610(a): A commenter argued that the penalty provisions are inappropriately severe and requested that a *willful or knowing* requirement be added to proposed §5.610.

Agency Response: The Department disagrees that the penalty provisions are overly harsh. The penalty provisions are established by statute. The standard for enforcement under each statute is established by that particular statute and cannot be modified by rule. However, to clarify how the provisions will operate procedurally, the Department has changed proposed §5.610(a) as adopted to read *the commissioner may after opportunity for notice and hearing, discipline an insurer or license holder under the Insurance Code Chapters 82, 83, and 84, and any other applicable law if the commissioner determines the insurer or license holder is in violation of, or has failed to comply, with any of the requirements of §§5.601 – 5.611.*

§5.611: Some commenters were concerned that the proposal did not describe the pilot test program detail. Some commenters argued for the IICMVA model web services program to be substituted for the pilot test program.

Agency Response: The Department declines to make this change. Although reportedly adopted in Wyoming and being tested in Florida, the Department is not aware that the IICMVA model web services program has been fully demonstrated or implemented in any state. To allow for change and innovation, adopted §5.611 is not limited to the existing IICMVA model web services program and the pilot test program has not been further defined because such definition could limit the development of the pilot test program.

§5.611 Commenters voiced concern that the pilot test program might be bound by the existing requirements of proposed §§5.606 – 5.608.

Agency Response: The Department agrees and has changed §5.611 to clarify that the test program shall not be bound by adopted §§5.606 – 5.608. However, neither the industry nor the implementing agencies are prohibited from placing the same or similar requirements on the test program for the purposes of obtaining implementing agency approval.

§5.611: A commenter argued that the language for the pilot test be modified to include wording that the pilot program could become a means of compliance if proven viable.

Agency Response: Adopted §5.611 has been revised to create a structure under which the test program can be tested, approved by the implementing agencies, and implemented as a means of program compliance.

5. NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTIONS.

For with changes: Alliance of Insurance Agents of Texas, Inc., American Southwest Insurance Managers, Bristol West Insurance Group, GAINSCO Auto Insurance, Farmers Insurance Group, Foremost Insurance Group, Insurance Industry Committee on Motor Vehicle Administration, Liberty Mutual Group, NLETS, Office of Public Insurance Counsel, Old American County Mutual, Progressive County Mutual Insurance Company, Property Casualty Insurers Association of America, State Farm Insurance Companies, Texas County Mutual Association, Texas Farm Bureau Insurance Companies, Texas State Low Cost Insurance, and USAA

Against: American Insurance Association, Association of Fire and Casualty Companies of Texas, and Insurance Council of Texas

6. STATUTORY AUTHORITY. The new sections are adopted under Transportation Code, Chapter 601, Subchapter N and §502.1715 and Insurance Code §§36.001 and 36.201. Transportation Code §601.451(a) requires the Department, in consultation with the Texas Department of Public Safety, the Texas Department of Transportation, and the Texas Department of Information Resources (the implementing agencies), to establish a program for verification of whether owners of motor vehicles have established financial responsibility as required by law and meeting the requirements of that subsection. Section 601.452(b) authorizes the implementing agencies to jointly adopt rules to administer Chapter 601, Subchapter N. Transportation Code §601.453(c)

provides that the implementing agencies shall convene a working group to facilitate the implementation of the program and coordinate a testing phase and necessary changes identified in the testing phase. Transportation Code §601.453 requires the Department in consultation with the other implementing agencies, under a competitive bidding procedure, to select a vendor to develop, implement, operate, and maintain the program. Transportation Code §601.454 requires each insurance company providing motor vehicle liability insurance policies in this state to provide necessary information for those policies to allow the vendor to carry out Transportation Code, Chapter 601, Subchapter N, subject to the vendor's contract with the implementing agencies and rules adopted under this subchapter; provides that the vendor is entitled only to information that is determined to be necessary by the implementing agencies for the vendor to carry out the program; limits the information to the information available at that time from the insurance company; and makes the information obtained under Transportation Code, Chapter 601, Subchapter N, confidential. Transportation Code §502.1715(c) authorizes, subject to appropriation, the implementing agencies to use funds deposited to the credit of the state highway fund under that section to implement Transportation Code, Chapter 601, Subchapter N. Transportation Code §502.1715(d) authorizes the implementing agencies to jointly adopt rules to administer Transportation Code §502.1715. Insurance Code §36.201 provides that an action of the Commissioner of Insurance, including a decision, order, rate, rule, form, or administrative or other ruling of the Commissioner, is subject to judicial review. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to

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

7. TEXT.

§5.601. Purpose and Scope. This division applies to insurers providing motor vehicle liability insurance in this state under personal automobile insurance policies. The division specifies the requirements, procedures, duties, and obligations of these insurers to comply with the Financial Responsibility Verification Program (program) established pursuant to Transportation Code, Chapter 601, Subchapter N.

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

(1) **Back-up data**--Data simultaneously copied, i.e. mirrored, to another physical location and storage device at set intervals.

(2) **Cascading data matching**--A data matching algorithm that uses multiple data fields to increase the accuracy and/or frequency of matched data. Cascading data matching may not result in a 100 percent match of all fields, but a match may be made with a reasonable degree of accuracy.

(3) **Cold site**--A secure location where equipment would be shipped following a disaster.

(4) **Critical time**--The time in days per week and/or hours per day when the system is expected to be available and fully functional.

(5) Data--Information of any type.

(6) Database insurer--An insurer that elects to report insurance policy records directly to the vendor using the database program.

(7) Database program--A vendor maintained database, derived from insurance policy records submitted by insurers and vehicle and driver information maintained by TxDOT and DPS, created for the purpose of insurance verification during the event based and ongoing verification processes.

(8) Delegated MGA--A department licensed managing general agent operating on behalf of an insurer through a delegation contract with that insurer under §5.609(a) of this subchapter (relating to Delegation and New Insurers).

(9) Department--Texas Department of Insurance.

(10) DPS--Texas Department of Public Safety.

(11) Event based process--A data transmission process using the database and/or web services programs to promptly verify insurance coverage.

(12) Hot site--A secure location with data processing equipment already in place that can be activated in case of a disaster.

(13) Insurer--An insurance company or insurance carrier that writes motor vehicle insurance in this state, including stock companies, mutual companies, Lloyd's plans, county mutuals, farm mutuals, surplus lines carriers, and reciprocal exchanges.

(14) Listed Driver--A driver listed on a personal automobile insurance policy, not including a named excluded driver to whom no coverage is offered under the insurance policy.

(15) Match Rate--The percentage of insurance policy records matched to vehicles, divided by the total number of all insurance policy records.

(16) Ongoing verification process--A data transmission process using the database and/or web services programs to verify financial responsibility of owners of motor vehicles on a continuing basis.

(17) Personal automobile insurance policy--A motor vehicle insurance policy providing the liability coverage required by the Texas Motor Vehicle Safety Responsibility Act in connection with the ownership, maintenance, or use of a private passenger, utility, or miscellaneous type motor vehicle, including a motor home, trailer, or recreational vehicle, that is owned or leased by an individual or individuals and not primarily used for the delivery of goods, materials, or services, other than for use in farm or ranch operations, including non-owner policies and mileage based policies.

(18) Program--Financial Responsibility Verification Program, including both the database program and the web services program.

(19) Recovery Point Objective (RPO)--The point in time at which the data processing services supporting the financial responsibility verification program are expected to be available following an outage.

(20) Recovery Time Objective (RTO)--The number of hours between the loss of data processing services until full services are expected to be available again.

(21) TxDOT--Texas Department of Transportation.

(22) User--A person that verifies insurance information through the Financial Responsibility Verification Program.

(23) User Guide--Financial Responsibility Verification Program Guide and User Manual.

(24) Vendor--Agent selected to develop, implement, operate, and maintain the Financial Responsibility Verification Program.

(25) VIN--Vehicle identification number.

(26) Web services insurer--An insurer that elects to provide insurance policy record data to the vendor using a web services program.

(27) Web services program--A program developed and maintained by a participating insurer that complies with §§5.606, 5.607, and 5.608 of this subchapter (relating to Requirements for Insurers Using the Web Services Program, Web Services Program System Requirements and Web Services Program Performance Requirements).

§5.603. Financial Responsibility Verification Program Guide and User Manual.

(a) The user guide established in accordance with SECTION 4 of SB 1670 (Acts 2005, 79th Leg., R.S., chap. 892, SB 1670 sec. 4) will provide technical guidance to insurers on how to comply with the requirements and procedures specified in §§5.601 – 5.611. The user guide specifications are subject to change based on technology or program experience. Such changes to the user guide shall not affect the substantive requirements of this division.

(b) The user guide may be obtained from the Data Services Division of the Texas Department of Insurance, Mail Code 105-5D, P.O. Box 149104, Austin, Texas 78714 or the department website at www.tdi.state.tx.us.

§5.604. Reporting Requirements for Insurers Using the Database Program.

(a) Unless an insurer provides the department notice of its election to be a web services insurer under §5.606(b) of this subchapter (relating to Requirements for Insurers Using the Web Services Program), each insurer shall participate in the database program for the event based and ongoing verification processes.

(b) Except as required in §§5.606 and 5.609 of this subchapter (relating to Delegation and New Insurers) each database insurer must begin compliance with this section and §5.605 of this subchapter (relating to Data Error Correction Requirements for Insurers Using the Database Program) beginning not earlier than January 1, 2007 and not later than June 30, 2007.

(c) Each database insurer shall submit weekly data on all of the insurer's personal automobile insurance policies in force in Texas. The data shall specify the following for each policy, policyholder, listed driver, and vehicle covered, and as necessary each policy, policyholder, listed driver, and vehicle combination:

- (1) company identifying information;
- (2) policy identifying information, including applicable coverage dates;
- (3) vehicle identifying information;
- (4) policyholder and/or listed driver identifying information; and

(5) an insurer defined data field for insurer use.

(d) The weekly submission date and time shall be specified by the vendor and shall be approximately seven calendar days apart.

(e) The department and vendor will develop specific database program reporting procedures for insurers with less than 1,000 issued and outstanding personal automobile insurance policies.

§5.605. Data Error Correction Requirements for Insurers Using the Database Program.

(a) Each database insurer shall investigate and correct data errors identified by the vendor as required in subsection (e) of this section.

(b) Each database insurer shall provide sufficient and accurate data to meet and maintain a 95 percent match rate beginning January 1, 2008 and a 98 percent match rate beginning January 1, 2010.

(c) The database insurer must be able to receive notice of data errors in the same manner that data is transmitted to the vendor, or a method that is mutually agreed upon by the vendor and the insurer.

(d) Insurers must re-submit corrected data.

(e) The database insurer, and/or its delegated MGA, shall receive notice of the following data errors from the vendor, and shall comply with the following data correction procedures:

(1) for data file format errors, the database insurer will have three business days to correct errors and resubmit the entire data file to the vendor; and

(2) for insurance policy records not matched to a registered vehicle, the vendor will send the insurer, and/or its delegated MGA, non-match notices:

(A) upon receipt of the first non-match notice from the vendor, including notice for errors beyond the database insurer's authority to correct, the insurer must:

(i) within 10 calendar days of receipt of the non-match notice, request from the policyholder confirmation of the insurer's existing information or corrected information;

(ii) request that the policyholder respond within 14 calendar days; however, the insurer shall not be subject to, nor shall the insurer subject the policyholder to, any penalty for the policyholder's non-compliance; and

(iii) send any correction(s) received from the policyholder to the vendor within the next two regularly scheduled data transmissions; and

(B) upon receipt of the second notice of the non-match error from the vendor, the insurer may, but is not required to, provide additional notices to the policyholder concerning that non-match error.

(f) Each database insurer must maintain a record of its data correction activities and determinations for review by the vendor and the department for four years. The records may be stored electronically.

(g) Each database insurer must assist the vendor in auditing the database program, including responding to vendor requests for confirmation of policy records matched to a registered vehicle using cascading data matching.

§5.606. Requirements for Insurers Using the Web Services Program.

(a) Each web services insurer must meet the requirements of the web services program through both the event based process and the ongoing verification process.

(b) Each insurer electing to use the web services program for the event based and ongoing verification processes must provide written notice to the department. Written notice must name the insurer or each insurer in a group, be signed by an officer of the company or group, and be submitted to the Financial Responsibility Verification Program Coordinator, Property and Casualty Program, Mail Code 105-5C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, not later than 10 business days after the date this section is effective. All submissions to the department under this division must be made to the Financial Responsibility Verification Program Coordinator (coordinator) unless otherwise specified.

(c) Not later than 30 calendar days after the insurer notifies the department of its election to become a web services insurer, the insurer must submit to the coordinator for approval written documentation and specifications addressing §5.607(a) – (e) of this subchapter (relating to Web Services Program System Requirements). Written documentation and specifications must include a detailed project plan including a timeline, a full description of the proposed web services solution, and other information

necessary to establish compliance with the web services program requirements. If it is determined as specified in subsection (i) of this section that the insurer's submission does not propose a solution that will meet all system and performance requirements, the insurer must begin program development to meet requirements of the database program as detailed in §§5.604 and 5.605 of this subchapter (relating to Reporting Requirements for Insurers Using the Database Program and Data Error Correction Requirements for Insurers Using the Database Program).

(d) If an insurer's web services documentation and specifications have been determined to meet the system requirements of subsection (c) of this section and the insurer has obtained the appropriate department approval, the insurer must within 90 calendar days after receiving written notice of department approval as required in subsection (c) of this section submit to the coordinator for approval documentation showing that the web services insurer is capable of meeting all system and performance requirements detailed in §§5.607 and 5.608 of this subchapter (relating to Web Services Program Performance Requirements). Such documentation must include a detailed progress report in compliance with the submitted project plan and timeline, and other information necessary to establish compliance with the web services program requirements. If it is determined as specified in subsection (i) of this section that the insurer's submission does not meet all system and performance requirements, the insurer must begin program development to meet requirements of the database program as detailed in §§5.604 and 5.605 of this subchapter.

(e) Each insurer that has met the system and performance requirements of subsection (d) of this section must within 180 calendar days after receiving written notice of department approval as required in subsection (c) of this section submit to the coordinator for approval documentation showing the insurer is able to meet all system and performance requirements detailed in §§5.607 and 5.608 of this subchapter. Such documentation shall include testing methodology, testing data sets, testing results, and other information necessary to establish compliance with the web services program requirements. If it is determined as specified in subsection (i) of this section that the insurer's submission does not meet all system and performance requirements, the insurer shall have 30 calendar days to comply with the database program requirements in §§5.604 and 5.605 of this subchapter and begin reporting data.

(f) Following department approval as required in subsection (e) of this section, each web services insurer shall begin a data clean-up phase. Required data clean-up procedures include:

(1) the web services insurer, and/or its delegated MGA, will receive a file of registered vehicles from TxDOT and must match insurance policy records to the file of registered vehicles;

(2) insurance policy records that cannot be matched to a registered vehicle will be required to undergo a data correction process, including for errors beyond the web services insurer's authority to correct;

(3) as necessary, the web services insurer must contact the policyholder to confirm or correct information as follows:

(A) within 10 calendar days of discovering the information indicated to be in error, request from the policyholder confirmation of the insurer's existing information or corrected information;

(B) request that the policyholder respond within 14 calendar days; however, the insurer shall not be subject to, nor shall the insurer subject the policyholder to, any penalty for the policyholder's non-compliance; and

(C) make any necessary correction within 15 calendar days after receipt of a response from the policyholder;

(4) while not required, the insurer may send additional notices concerning that non-match error to the policyholder if the insurer does not receive a correction response from the policyholder; however, the insurer shall not be subject to, nor shall the insurer subject the policyholder to, any penalty for the policyholder's non-compliance; and

(5) the web services insurer, and/or its delegated MGA, may request a reload of TxDOT data as needed during the data clean-up/correction process.

(g) Each web services insurer must achieve and maintain a 95 percent match rate by January 1, 2008 and a 98 percent match rate by January 1, 2010. The insurer and/or the vendor shall submit information and documentation to the coordinator on request indicating whether the insurer has achieved the required match rate. If it is determined as specified in subsection (i) of this section that the insurer has not met the match rate and all system and performance requirements, the insurer shall have 30

days to comply with the database program requirements in §§5.604 and 5.605 of this subchapter and begin reporting data.

(h) Each insurer approved to use the web services program must maintain all web service requirements. The coordinator may request information from the vendor and/or the insurer to confirm that the web services insurer is maintaining all web service requirements. If it is determined as specified in subsection (i) of this section that a web services insurer that has previously met all web services requirements is unable to maintain the system and performance requirements as required in this section and §§5.607 and 5.608 of this subchapter the web services insurer shall:

(1) no longer be allowed to operate as a web services insurer; and

(2) have 30 days to comply with the database program requirements in §§5.604 and 5.605 of this subchapter and begin reporting data.

(i) The procedure for determining whether an insurer has met the requirements of this section shall be as follows:

(1) In computing any period of time prescribed or allowed by this division, the day of the act, event, or default after which the designated period of time begins to run shall not be included, but the last day of the period so computed shall be included, unless it be a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a legal holiday;

(2) On or before the date specified in subsections (c), (d), or (e) of this section, and as requested by the coordinator under subsections (g) or (h) of this section,

the insurer shall submit all specifications, documentation, and other data to the coordinator;

(3) Within 14 calendar days of submission by the insurer, the coordinator shall review the submission and provide written notification to the insurer if the submission is determined to be in compliance or if it fails to meet the requirements;

(4) If the coordinator notifies the insurer that the submission fails to meet the requirements, the insurer may appeal to the commissioner for review of the coordinator's decision by making a written request to the coordinator within 20 calendar days of the date the insurer receives the coordinator's written decision. The written request for review must provide a rebuttal of the coordinator's written decision. If the insurer does not appeal the coordinator's written decision within the 20 calendar day period, the coordinator's written decision shall become final; and

(5) Within 14 calendar days of receiving the rebuttal, the commissioner, or the commissioner's authorized representative, shall make a written determination on the basis of the original submission, the coordinator's written decision, and the insurer's rebuttal.

(j) A decision under subsection (i)(5) of this section may be appealed under Texas Insurance Code §36.201.

(k) An appeal to the commissioner under subsection (i) of this section does not stay or extend the period for compliance with the database program under subsections (c), (d), (e), (g), and (h) of this section.

§5.607. Web Services Program System Requirements.

(a) A web services insurer must design, develop, maintain, and submit specifications for a web services program application capable of verifying the status of a policyholder's insurance information. The program must enable the insurer to receive and respond to the vendor's insurance verification inquiries during the event based process and to process batch inquiries of multiple vehicles during the ongoing verification process.

(b) The web services program transmission format and protocols must be compliant with XML standards as published by the World Wide Web Consortium (W3C).

(c) The insurer's web services program must incorporate basic web service infrastructure standards; select a common XML standard to align with the other web services infrastructure standards; and set forth procedures for agreement between insurers and the vendor to use one set of web services security standards, adhere to SOAP 1.1 standards, and use one set of authentication standards.

(d) The web services insurer must develop and implement an algorithm that matches policy and policyholder data to information provided by the vendor in the query process. The algorithm may also use cascading data matching that may not result in a 100 percent match of all fields, but a match may be made with a reasonable degree of accuracy. The algorithm must match information using:

- (1) the VIN, if available, and one additional field; or
- (2) at least two data fields provided by the vendor.

(e) Data fields provided by the vendor shall include:

- (1) VIN;
- (2) registered owner's and/or listed driver's license number;
- (3) vehicle make, model, and year;
- (4) registered owner's and/or listed driver's name;
- (5) registered owner's and/or listed driver's address;
- (6) registered owner's and/or listed driver's date of birth; and
- (7) specific policy coverage date, as applicable.

(f) For information found to be in error, each web services insurer continuing in the web services program must, as necessary, contact its policyholders to confirm or correct information using the data clean-up procedures outlined in §5.606 of this subchapter (relating to Requirements for Insurers Using the Web Services Program).

(g) Each web services insurer must provide a disaster recovery plan that meets the following requirements:

- (1) recovery time objective within two hours during the critical time period that is defined as seven days per week, 24 hours per day per program; a single data center solution is acceptable;

- (2) recovery point objective consisting of the last data load;

- (3) a hot site or cold site capable of meeting the recovery time objective;

and

- (4) back-up data consisting of weekly backup following the data load.

(h) Each web services insurer must provide up-time and availability of 99.8 percent for the event based process. This requirement excludes scheduled and

planned outages for upgrades or maintenance; outages requested by the department; and outages resulting from the failure of any systems or components that are not owned, controlled, or contracted by the vendor or web services insurer, unless the cause of the failure can be shown to have been a result of the web services insurer's negligence or malfeasance.

(i) Each web services insurer must comply with all procedures relating to data confidentiality and security standards, including:

(1) signing any documents necessary to enable the vendor to comply with the disclosure restrictions and privacy protections required by:

- (A) the department;
- (B) TxDOT;
- (C) DPS;
- (D) the Texas Department of Information Resources; and/or
- (E) the Texas Law Enforcement Telecommunications System;

(2) adhering to the confidentiality provisions of Transportation Code, Chapter 601, Subchapter N, including compliance with unique identifiers and passwords for user access to the program and entering into legal trading partner agreements with the vendor to exchange data via the web services program;

(3) adhering to the provisions of Texas Administrative Code Title 1, Part 10, Chapter 202 (relating to Information Security Standards); and

(4) adhering to any other procedures set forth to ensure that the program is protected against unauthorized access, disclosure, modification or destruction,

whether accidental or deliberate, as well as to assure the availability, integrity, utility, authenticity, and confidentiality of information.

§5.608. Web Services Program Performance Requirements.

(a) The web services insurer must accept and respond to insurance verification inquiries from the vendor.

(b) The web services insurer must respond to inquiries in no more than 1.75 seconds, of which 0.25 seconds is allotted for transmission from vendor to insurer, and 0.25 seconds is allotted for transmission from insurer to vendor.

(c) The web services insurer must respond to the vendor with either an affirmative response and applicable information, or with a negative response as appropriate.

(d) Policy and policyholder data that the web services insurer must return with an affirmative response includes, to the extent that the information is at that time available from the insurer:

- (1) company identifying information;
- (2) policy identifying information, including applicable coverage dates;
- (3) vehicle identifying information;
- (4) policyholder's and/or listed driver's identifying information; and
- (5) an insurer defined data field for insurer use.

(e) The web services insurer, and/or its delegated MGA, shall receive notification from the vendor of:

- (1) any problems with the transmission of the inquiry response; and
- (2) multiple affirmative responses to a verification request.

(f) On a monthly basis for the purpose of vehicle registration renewals, the vendor must, as required by TxDOT, submit to each web services insurer, and/or its delegated MGA, a file of registered vehicles approaching the registration renewal date. The web services insurer must mark as "insured" each registered vehicle for which an active insurance policy record is on file and return that file to the vendor within three days of receipt of the registration renewal file.

(g) Beginning on January 1, 2008, on a weekly basis for the purpose of ongoing verification, the vendor shall submit to each web services insurer, and/or its delegated MGA, a file of registered vehicles for which the insurer must:

- (1) mark as "insured" each registered vehicle for which an active insurance policy record is on file and return that file to the vendor within three days of receipt of the registered vehicle file; and

- (2) return to the vendor a file of all insurance policy records that could not be matched to a registered vehicle.

(h) Each web services insurer must maintain necessary information to assist the department in auditing the vendor's monthly and annual reports, including archiving:

- (1) computer data files at least semi-annually for auditing purposes in an electronic format compatible with the department's computer systems that shall include:

- (A) time a query is received to the hundredth of a second;
- (B) time a query is responded to, to the hundredth of a second;

(C) query contents;

(D) query response; and

(2) program audit trails, document control, program access control and software change control.

(i) Each web services insurer must maintain its archived data for a minimum of four years.

(j) Each web services insurer must develop and implement maintenance plans that comply with the following:

(1) maintenance schedule as outlined by the department (with insurer and vendor input) and that may include modifications of the web services program after delivery to correct faults, improve performance, add other attributes, or adapt to a changed technical environment;

(2) coordination of all maintenance with the department that includes obtaining written approvals for the maintenance;

(3) a process for approval of exceptional or emergency maintenance; and

(4) provisions for corrective maintenance, adaptive maintenance, and perfective maintenance.

§5.609. Delegation and New Insurers.

(a) An insurer may delegate by written contract the functions that the insurer is required to perform under the program to one or more department licensed managing general agents (MGA), and to the extent an insurer has contractually delegated any

requirement of §§5.601 – 5.611 to an MGA, the MGA shall be deemed an insurer for the purposes of §§5.601 – 5.611. A copy of the delegation agreement must be submitted to the department's Financial Responsibility Verification Program Coordinator and the vendor. Under such delegation, both the MGA and the insurer shall be jointly and severally responsible for full compliance with this program and jointly and severally subject to disciplinary actions from the department for failure to meet program requirements.

(b) An insurer or delegated MGA that commences writing personal automobile insurance in the Texas market more than 10 business days after the effective date of §5.606 of this subchapter (relating to Requirements for Insurers Using the Web Services Program), but before June 1, 2007, shall comply with the database program as detailed in §§5.604 and 5.605 of this subchapter (relating to Reporting Requirements for Insurers Using the Database Program and Data Error Correction Requirements for Insurers Using the Database Program) and must begin reporting data on or before June 30, 2007.

(c) An insurer that commences writing personal automobile insurance in the Texas market on or after June 1, 2007 shall have 30 calendar days to comply with the database program requirements in §§5.604 and 5.605 of this subchapter and begin reporting data.

(d) An MGA that has been contracted to act on behalf of an insurer under subsection (a) of this section has the same reporting options as an insurer. An MGA that contracts to act on behalf of an insurer under subsection (a) of this section more

than 10 business days after the effective date of §5.606 of this subchapter must comply with the database program requirements in §§5.604 and 5.605 of this subchapter and begin reporting data as specified for an insurer in subsections (b) and (c) of this section.

§5.610. Penalties.

(a) The commissioner may after opportunity for notice and hearing, discipline an insurer or license holder under the Insurance Code Chapters 82, 83, and 84, and any other applicable law if the commissioner determines the insurer or license holder is in violation of, or has failed to comply, with any of the requirements of §§5.601 – 5.611.

(b) In accordance with Transportation Code §601.454, a person commits an offense if the person knowingly uses data obtained under Chapter 601, Subchapter N, for any purpose not authorized under Subchapter N. An offense under §601.454(d) is a Class B misdemeanor.

§5.611. Participation in Voluntary Testing Transmission System.

(a) An insurer or group of insurers (participating insurers) may test a transmission system based on the transmission of insurer provided key-data to provide verification of compliance with the Texas Motor Vehicle Safety Responsibility Act.

(b) Further specifics for the test program will be developed by the department, TxDOT, DPS, and the Texas Department of Information Resources (implementing agencies), the participating insurers, and the vendor.

(c) When the participating insurers demonstrate a working test program for the event based process, the ongoing verification process, or both, to the satisfaction of the implementing agencies, the accepted test program will become an alternate means of compliance with the Financial Responsibility Verification Program to the extent it has been accepted for use by the implementing agencies to fulfill the event based process and/or ongoing verification process of the program.

(d) Insurers must comply with either the database system or the web services system until such date as the department and/or the other implementing agencies adopt rules detailing technical, performance, and user requirements for use with the accepted test program.

(e) Insurers are responsible for funding all equipment and technical resources necessary for the development, testing, and deployment of the test program and the accepted test program, except for those funds the implementing agencies have authorized the vendor to spend in connection with the test program.

(f) Sections 5.606, 5.607, and 5.608 of this subchapter (relating to Requirements for Insurers Using the Web Services Program, Web Services Program System Requirements, and Web Services Program Performance Requirements) shall not apply to the test program. This does not limit the insurers or the implementing agencies from requiring the same or similar technical, performance, and user requirements described in those sections as may be necessary to create a functioning system and obtain implementing agency approval.

CERTIFICATION. This agency hereby certifies that the adopted sections have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on _____, 2006.

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that new Division 7, §§5.601 – 5.611, concerning the Financial Responsibility Verification Program specified herein, is adopted.

AND IT IS SO ORDERED.

MIKE GEESLIN
COMMISSIONER OF INSURANCE

ATTEST:

TITLE 28. INSURANCE
Part I. Texas Department of Insurance
Chapter 5. Property and Casualty Insurance

Adopted Sections
Page 78 of 78

Gene C. Jarmon
General Counsel and Chief Clerk

COMMISSIONER'S ORDER NO. _____