TEXAS REGISTER

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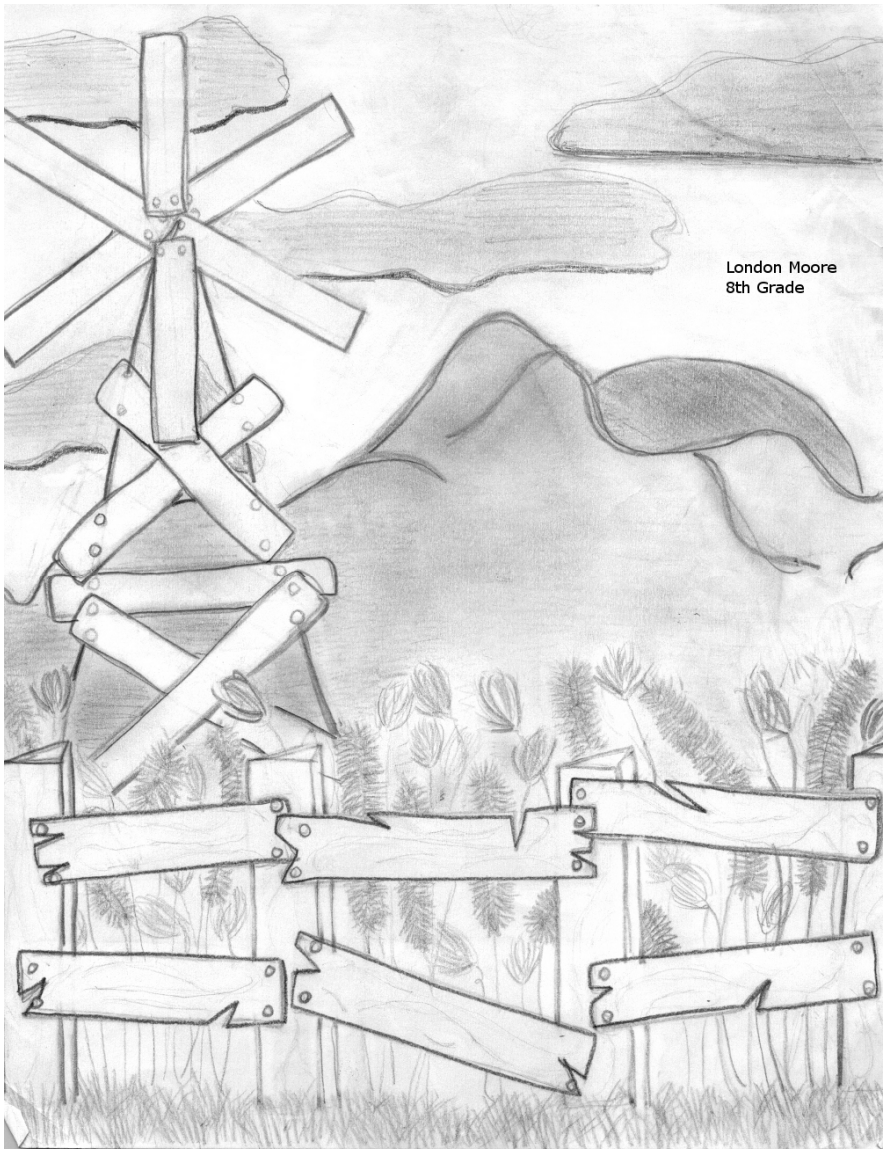

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but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

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

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Open Meetings

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

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

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

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

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

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://texasattorneygeneral.gov/og/open-government

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

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

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

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for October 19, 2016

Appointed to the Interstate Compact on Educational Opportunity for Military Children for a term to expire at the pleasure of the Governor, Shelley Ramos of Austin, Texas as Alternate Compact Commissioner.

Greg Abbott, Governor

TRD-201605527

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Appointments

Appointments for October 20, 2016

Appointed to the Department of Information Resources for a term to expire at the pleasure of the Governor, Linda I. Shaunessy of Austin, Texas as Presiding Officer.

Appointed to the Department of Information Resources for a term to expire February 1, 2017, Benjamin E. "Ben" Gatzke of Fort Worth, Texas (replacing Phillip "Keith" Morrow of Southlake who resigned).

Appointed to the Department of Information Resources for a term to expire February 1, 2021, Jason E. Boatright of Dallas, Texas (replacing John B. Scott of Fort Worth who reesigned).

Greg Abbott, Governor

TRD-201605529

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Appointments

Appointments for October 26, 2016

Appointed to the Upper Guadalupe River Authority for a term to expire February 1, 2017, William R. "Bill" Rector, M.D. of Kerrville, Texas (replacing Hugh R. Jons, Jr. of Kerrville who resigned).

Greg Abbott, Governor

TRD-201605598

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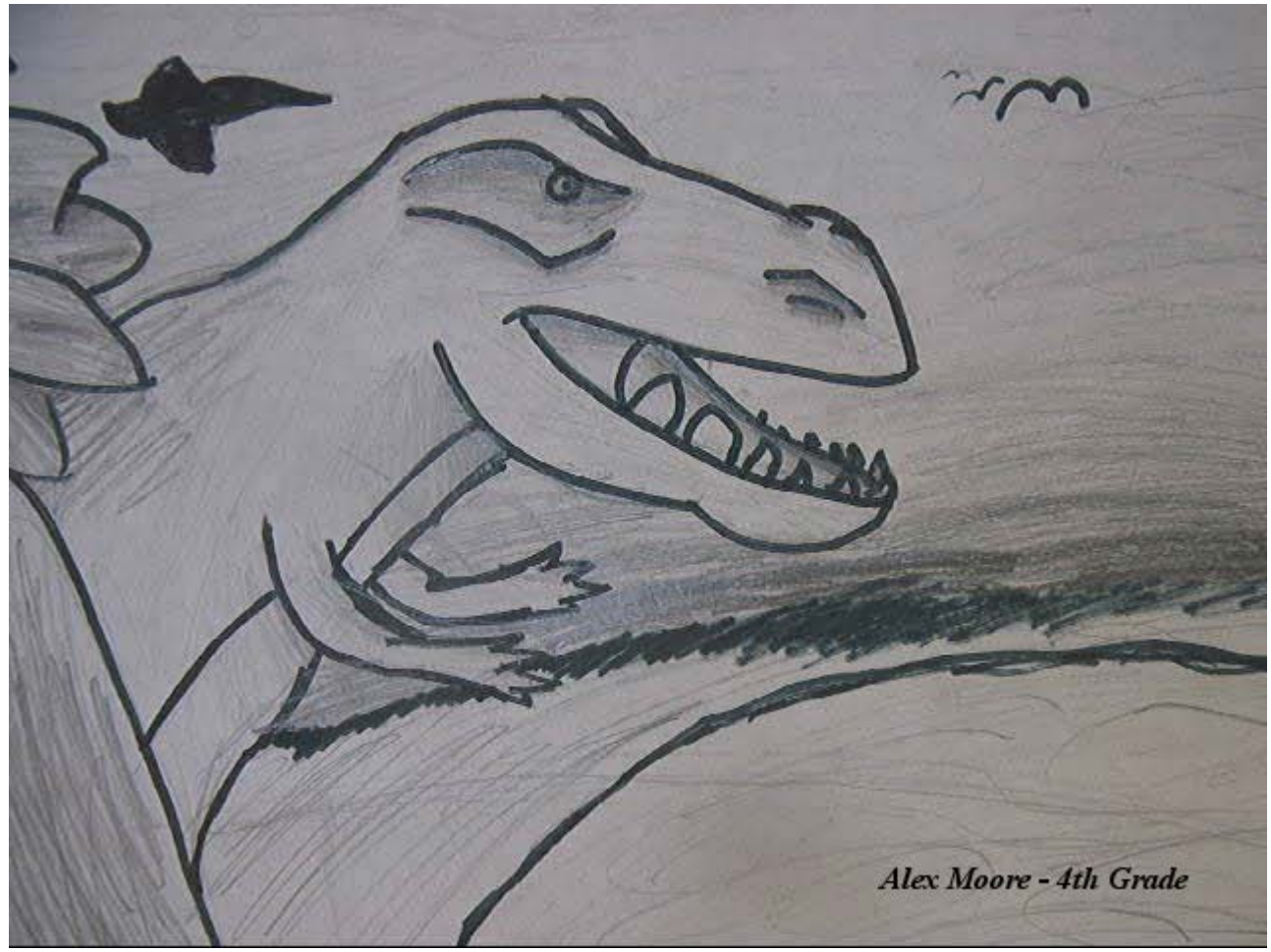
Alex Moore - 4th Grade

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER B. GENERAL REPORTING RULES

1 TAC §20.50

The Texas Ethics Commission (the commission) proposes an amendment to Texas Ethics Commission Rules §20.50, regarding the disclosure of political contributions maintained at the end of a reporting period.

Section 254.031(a)(8) of the Election Code states that a person filing a campaign finance report must disclose "the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period." (Emphasis added.)

The amendment to Commission Rules §20.50 adds a provision that the amount of political contributions maintained includes the balance of political contributions accepted and held in any online fundraising account over which the filer can exercise control by making a withdrawal, expenditure, or transfer.

Additionally, the amendment addresses "de minimis" errors in the total amount of political contributions maintained. For purposes of that statutory exception, if the error in the amount of political contributions maintained does not exceed 10 percent of the amount disclosed or $2,500, whichever is less, then it is de minimis and therefore not a violation. The rule also provides that if the error is $250 or less, then it is also de minimis.

Natalia Luna Ashley, Executive Director, has determined that for each odd numbered year of the first five years this rule as amended is in effect there will be no fiscal implication for local government as a result of enforcing or administering this rule.

Ms. Ashley has also determined that for each year of the first five years the amendment is in effect the public benefit will be clarity in what types of accounts are included in the political contributions maintained balance and how a "de minimis" error in the political contributions maintained balance is determined.

The commission invites comments on the proposed amendment from any member of the public. A written statement should be emailed to *public_comment@ethics.state.tx.us,* or mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed amendment may do so at any commission meeting during the agenda item relating to the proposed amendment. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or on the commission's website at www.ethics.state.tx.us.

The amendment to §20.50 is proposed under Tex. Gov't Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The amendment to §20.50 affects Chapter 254 of the Texas Election Code, including §254.031(a)(8) and §254.0611(a)(1).

§20.50. Total Political Contributions Maintained.

(a) For purposes of Election Code §254.031(a)(8) and §254.0611(a)(1), the total amount of political contributions maintained in one or more accounts includes the following:

(1) The balance [~~Balance~~] on deposit in banks, savings and loan institutions, and other depository institutions; [~~and~~]

(2) The present value of any investments that can be readily converted to cash, such as certificates of deposit, money market accounts, stocks, bonds, treasury bills, etc.; and

(3) The balance of political contributions accepted and held in any online fundraising account over which the filer can exercise control by making a withdrawal, expenditure, or transfer.

(b) For purposes of Election Code §254.031(a)(8) and §254.0611(a)(1), the total amount of political contributions maintained includes personal funds that the filer intends to use for political expenditures only if the funds have been deposited in an account in which political contributions are held as permitted by Election Code §253.0351(c).

(c) For purposes of Election Code §254.031(a-1), the difference between the total amount of political contributions maintained that is disclosed in a report and the correct amount is a de minimis error if the difference does not exceed:

(1) $250; or

(2) the lesser of 10% of the amount disclosed or $2,500.

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

Filed with the Office of the Secretary of State on October 18, 2016.

TRD-201605427

Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Earliest possible date of adoption: December 4, 2016
For further information, please call: (512) 463-5800

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CHAPTER 26. POLITICAL AND LEGISLATIVE ADVERTISING

1 TAC §26.1

The Texas Ethics Commission (the commission) proposes an amendment to Texas Ethics Commission Rules §26.1, to clarify the disclosure statement requirements for political advertising.

Section 255.001 of the Election Code requires political advertising that is "published distributed or broadcast" and that contains express advocacy to "indicate in the advertising that it is political advertising" and the full name of either the person who paid for it, the political committee authorizing it, or the candidate or specific-purpose committee supporting the candidate if it is authorized by the candidate. Section 251.001 of the Election Code defines "political advertising" as, in part, a communication supporting or opposing a candidate or a measure that (A) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television, or (B) appears in certain forms of written communication or on an Internet website.

Section 255.001 of the Election Code clearly applies to paid radio broadcasts that contain express advocacy. However, Ethics Commission Rules §26.1, as currently written, may be reasonably interpreted in a manner to exclude radio broadcasts from the disclosure requirements of Election Code §255.001. Thus, the amendment to the rule is necessary to eliminate the rule's ambiguity and to clarify how the statutory disclosure requirements apply to radio broadcasts. The narrow amendment addresses only how a disclosure statement must appear in political advertising when it is required by Election Code §255.001.

The rule currently states that the disclosure statement must include the words "political advertising" or a recognizable abbreviation and must appear on one line of text or on successive lines of text on the face of the political advertising. The amendment would add that the statement must be "clearly spoken" in political advertising that does not include written text.

Natalia Luna Ashley, Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

Ms. Ashley has also determined that for each year of the first five years the proposed amendment is in effect the public benefit will be clarity in the commission's rules regarding the disclosure statement requirements for political advertising that does not include written text. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

The Texas Ethics Commission invites comments on the proposed amendment from any member of the public. A written statement should be emailed to *public_comment@ethics.state.tx.us,* or mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed amendment may do so at any commission meeting during the agenda item relating to the proposed amendment. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or on the Texas Ethics Commission's website at www.ethics.state.tx.us.

The amendment to §26.1 is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The amendment to §26.1 affects §255.001 of the Election Code.

§26.1. Disclosure Statement.

(a) A [~~The~~] disclosure statement that is required by §255.001, Election Code, must contain the words "political advertising" or any recognizable abbreviation, and must:

(1) appear on one line of text or on successive lines of text on the face of the political advertising; or

(2) be clearly spoken in the political advertising if the political advertising does not include written text.

(b) A disclosure statement is not required on political advertising printed on letterhead stationery if the letterhead contains the full name of one of the following:

(1) the person who paid for the political advertising;

(2) the political committee authorizing the political advertising; or

(3) the candidate authorizing the political advertising.

(c) A disclosure statement is not required on campaign buttons, pins, or hats, or on objects whose size makes printing the disclosure impractical.

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

Filed with the Office of the Secretary of State on October 18, 2016.

TRD-201605431
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Earliest possible date of adoption: December 4, 2016
For further information, please call: (512) 463-5800

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CHAPTER 34. REGULATION OF LOBBYISTS
SUBCHAPTER B. REGISTRATION REQUIRED

1 TAC §34.43

The Texas Ethics Commission (the commission) proposes an amendment to Texas Ethics Commission Rules §34.43, regarding an exception to the lobby registration requirements.

In 2015, the legislature amended §305.003 of the Government Code by providing that a person does not have to register for receiving compensation or reimbursement over the quarterly threshold if the person spends no more than 26 hours, or an-

other amount of time determined by the commission, for which the person is compensated or reimbursed to lobby.

Before the 2015 statutory amendment, the commission's rule §34.43(b) had exempted from the registration requirement, based on compensation or reimbursement, a person who does not spend more than five percent of their compensated time during a calendar quarter engaging in lobby activity. The proposed amendment would set the threshold for the exemption at 40 hours in a calendar quarter. Thus, a person would not be required to register, for purposes of the requirement to register based on compensation or reimbursement, if the person spends not more than 40 hours for which the person is compensated or reimbursed during a calendar quarter engaging in lobby activity, including preparatory activity.

Natalia Luna Ashley, Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. Ashley has also determined that for each year of the first five years the amendment is in effect the public benefit will be clarification regarding an exception to the lobby registration requirements. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amended rule.

The commission invites comments on the proposed amendment from any member of the public. A written statement should be emailed to *public_comment@ethics.state.tx.us,* or mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed amendment may do so at any commission meeting during the agenda item relating to the proposed amendment. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or on the commission's website at www.ethics.state.tx.us.

The amendment to §34.43(b) is proposed under Tex. Gov't Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission, and Tex. Gov't Code §305.003(b-3).

The amendment to §34.43(b) affects Chapter 305 of the Government Code.

§34.43. Compensation and Reimbursement Threshold.

(a) A person must register under Government Code, §305.003(a)(2), if the person receives, or is entitled to receive under an agreement under which the person is retained or employed, more than $1000 in a calendar quarter in compensation and reimbursement, not including reimbursement for the person's own travel, food, lodging, or membership dues, from one or more other persons to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action.

(b) For purposes of Government Code, §305.003(a)(2), and this chapter, a person is not required to register if the person spends not more than 40 hours for which the person is compensated or reimbursed [~~no more than 5.0% of the person's compensated time~~] during a calendar quarter [~~is time spent~~] engaging in lobby activity, including preparatory activity as described by §34.3 of this title.

(c) For purposes of Government Code, §305.003(a)(2), and this chapter, a person shall make a reasonable allocation of compensation between compensation for lobby activity and compensation for other activities.

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

Filed with the Office of the Secretary of State on October 18, 2016.

TRD-201605432
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Earliest possible date of adoption: December 4, 2016
For further information, please call: (512) 463-5800

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CHAPTER 46. DISCLOSURE OF INTERESTED PARTIES

1 TAC §46.4

The Texas Ethics Commission (the commission) proposes new Texas Ethics Commission Rules §46.4, regarding the requirement to file a disclosure of interested parties form (Form 1295) when a change is made to a contract.

In 2015, the Texas Legislature adopted House Bill 1295, which states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties at the time the business entity submits the signed contract. House Bill 1295 also requires the commission to adopt rules necessary to implement the new disclosure requirement and to prescribe the disclosure form. The commission has adopted rules necessary to implement §2252.908; the rules are located in chapter 46.

Under the law, Form 1295 is only required for a contract that either (1) requires an action or vote by the governing body of the entity or agency or (2) has a value of at least $1 million. Section 46.3 of the commission's rules includes definitions of various terms and defines a "contract" as, in part, an amended, extended, or renewed contract.

The proposed new rule is intended to provide clarity regarding when a change to a contract, including a change order, is considered a "contract" under the rules and triggers a Form 1295 filing. The proposed new rule states that a Form 1295 would only be required for a change made to an existing contract in certain circumstances:

1. If a Form 1295 was not filed for the existing contract, then a filing is required if the changed contract either requires an action or vote by the governing body of the governmental entity or state agency or the value of the changed contract is at least $1 million.

2. If a Form 1295 was filed for the existing contract, then a filing is required for the changed contract if there is a change to the information in the Form 1295, the contract requires an action or vote by the governing body of the governmental entity or state agency, or the value of the changed contract increases by at least $1 million.

Natalia Luna Ashley, Executive Director, has determined that for the first five-year period the proposed new rule is in effect there

will be no fiscal implications for state or local government as a result of enforcing or administering the proposed new rule.

Ms. Ashley has also determined that for each year of the first five years the proposed new rule is in effect the public benefit will be clarity in when a disclosure of interested parties form is required when a change is made to a contract between a state agency or governmental entity and a business entity. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed new rule.

The Texas Ethics Commission invites comments on the proposed new rule from any member of the public. A written statement should be emailed to *public_comment@ethics.state.tx.us,* or mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed new rule may do so at any commission meeting during the agenda item relating to the proposed new rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or on the Texas Ethics Commission's website at www.ethics.state.tx.us.

The new rule §46.4 is proposed under §2252.908(g), Texas Government Code, which requires and authorizes the commission to adopt rules necessary to implement §2252.908.

The proposed new rule, §46.4, affects §2252.908 of the Government Code.

§46.4. Changes to Contracts.

(a) Section 2252.908 of the Government Code does not apply to a change made to an existing contract, including an amendment, change order, or extension of a contract, except as provided by subsection (b) or (c) of this section.

(b) Section 2252.908 of the Government Code applies to a change made to an existing contract, including an amendment, change order, or extension of a contract, if a disclosure of interested parties form was not filed for the existing contract; and either:

(1) the changed contract requires an action or vote by the governing body of the entity or agency; or

(2) the value of the changed contract is at least $1 million.

(c) Section 2252.908 of the Government Code applies to a change made to an existing contract, including an amendment, change order, or extension of a contract, if the business entity submitted a disclosure of interested parties form to the governmental entity or state agency that is a party to the existing contract; and either:

(1) there is a change to the disclosure of interested parties; or

(2) the changed contract requires an action or vote by the governing body of the entity or agency; or

(3) the value of the changed contract is at least $1 million greater than the value of the existing contract.

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

Filed with the Office of the Secretary of State on October 18, 2016.

TRD-201605433

Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Earliest possible date of adoption: December 4, 2016
For further information, please call: (512) 463-5800

CHAPTER 50. LEGISLATIVE SALARIES AND PER DIEM

1 TAC §50.1

The Texas Ethics Commission (the commission) proposes an amendment to Texas Ethics Commission Rules §50.1, relating to the legislative per diem as required by the Texas Constitution, article III, section 24a.

This section sets the per diem for members of the legislature and the lieutenant governor at $217 for the biennium.

Natalia Luna Ashley, Executive Director, has determined that for each odd numbered year of the first five years this rule is in effect there will be no fiscal implication for local government as a result of enforcing or administering this rule. The fiscal implication for the state will be $16,587,480, which may increase if special sessions are called.

Ms. Ashley has also determined that for each year of the first five years the amendment is in effect the public benefit expected as a result of adoption of the proposed rule is a determination, in compliance with the Texas Constitution, of the per diem entitled to be received by each member of the legislature and the lieutenant governor under the Texas Constitution, Article III, section 24, and Article IV, section 17, during the biennium.

The commission invites comments on the proposed amendment from any member of the public. A written statement should be emailed to *public_comment@ethics.state.tx.us,* or mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed amendment may do so at any commission meeting during the agenda item relating to the proposed amendment. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or on the commission's website at www.ethics.state.tx.us.

The amendment to §50.1 is proposed under Tex. Gov't Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The amendment to §50.1 affects the Texas Constitution, Article III, section 24; Article III, section 24a; and Article IV, section 17.

§50.1. Legislative Per Diem.

(a) The legislative per diem is $217 [~~$190~~]. The per diem is intended to be paid to each member of the legislature and the lieutenant governor for the biennium [~~each day during the regular session and for each day during any special session~~].

(b) If necessary, this rule shall be applied retroactively to ensure payment of the $217 [~~$190~~] per diem for 2017 [~~2015~~].

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

Filed with the Office of the Secretary of State on October 19, 2016.

TRD-201605466
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Earliest possible date of adoption: December 4, 2016
For further information, please call: (512) 463-5800

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8061

The Texas Health and Human Services Commission (HHSC) proposes amendments to §355.8061, concerning Outpatient Hospital Reimbursement.

Background and Justification

Section 355.8061 describes the reimbursement methodology for outpatient hospital services, including outpatient hospital imaging. Under this methodology, outpatient hospital imaging services for all hospitals except rural hospitals are reimbursed a percentage of the Medicare fee schedule, with reimbursements capped at 125 percent of the Medicaid adult acute care fee for a similar service. For the purpose of this rule, rural hospitals are defined as hospitals located in a county with 60,000 or fewer persons according to the 2010 U.S. Census as well as Medicare-designated Rural Referral Centers, Sole Community Hospitals, and Critical Access Hospitals.

Prior to September 1, 2015, rural hospital outpatient imaging services were reimbursed under the same methodology as non-rural hospital outpatient imaging services. Effective September 1, 2015, the 2016-2017 General Appropriations Act (Article II, Health and Human Services Commission, House Bill 1, 84th Legislature, Regular Session, 2015, Special Provisions Relating to all Health and Human Services Agencies, Section 58) directed HHSC to expend additional funds to provide modifications to Medicaid outpatient provider reimbursements for rural hospitals to ensure access to critical services. To comply with Section 58, among other actions, §355.8061 was amended to set rural hospital outpatient imaging services reimbursements equal to non-rural hospital reimbursements plus various add-on payments. This change was estimated to increase rural hospital outpatient imaging reimbursements by approximately $1.4 million all funds per annum.

HHSC reviews fees for imaging services at least once every two years by comparing existing Texas Medicaid fees to fees paid under Medicare. The most recent review of these fees indicated that Medicare fees for imaging services are lower now than they were when Medicaid fees were last adjusted. As a result, under HHSC's existing imaging services reimbursement methodologies, imaging fees should be reduced for acute care services which would, in turn, result in reductions to any hospital outpatient imaging service fee where the current fee is greater than 125 percent of the new acute care fee. Such reductions would reduce rural hospital outpatient imaging services reimbursements by approximately $1.0 million all funds per annum, largely negating the increase in the fees funded through Section 58 of the appropriations special provisions.

In order to preserve the increased rural hospital outpatient imaging funding authorized under Section 58, the proposed rule establishes a new reimbursement methodology for rural hospital outpatient imaging services. Under the new methodology, rural hospital imaging fees will be based on a percentage of the Medicare Outpatient Prospective Payment System (OPPS) fee schedule, which will de-link the rural hospital fees from the acute care and non-rural hospital fees. This change will allow HHSC to exclude rural hospital outpatient imaging fees from reductions to acute care and non-rural hospital imaging fees.

Section-by-Section Summary

The proposal amends subsection (d)(2) to indicate that, for rural hospitals, outpatient hospital imaging services are reimbursed based on a percentage of the Medicare OPPS fee schedule for similar services.

A change is proposed to subsection (d)(1) to clarify that the Medicare OPPS fee schedule is used. This is a non-substantive change that does not amend the methodology used for non-rural hospital imaging service fees.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for the first five years the proposed amendment is in effect, there will not be a fiscal impact to the state government. The proposed rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Public Benefit

Pam McDonald, Director of Rate Analysis, has determined that for each year of the first five years the rule is in effect, the expected public benefit is that access to rural hospital outpatient imaging services will be enhanced.

Small BUSINESS and Micro-Business Impact Analysis

HHSC has determined that the proposed amendment will not have an adverse economic impact on small businesses or micro-businesses as a result of enforcing or administering the amendments. No hospital meeting the definition of a small or micro-business receives Medicaid funding for outpatient imaging services. As well, the implementation of the proposed rule amendment does not require any changes in practice or any additional cost to the contracted provider.

Regulatory Analysis

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

proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Laura Skaggs, Rate Analysis, Brown Heatly Building, MC: H-400, 4900 North Lamar Blvd, Austin, Texas 78714-9030; by fax to (512) 730-7475; or by e-mail to laura.skaggs@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Public Hearing

A public hearing to receive public comment on this proposed amendment is scheduled for December 15, 2016, from 9:00 a.m. to 10:00 a.m. (Central Time) in the Public Hearing Room, Brown Heatly Building, 4900 North Lamar Blvd, Austin, Texas 78714-9030. Persons requiring further information, special assistance, or accommodations should contact Amy Chandler at (512) 487-3419.

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code, Chapter 32.

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

§355.8061. Outpatient Hospital Reimbursement.

(a) Introduction. The Health and Human Services Commission (HHSC) or its designee reimburses outpatient hospital services under the reimbursement methodology described in this section. Except as described in subsections (c) and (d) of this section, HHSC will reimburse for outpatient hospital services based on a percentage of allowable charges and an outpatient interim rate.

(b) Interim reimbursement.

(1) HHSC will determine a percentage of allowable charges, which are charges for covered Medicaid services determined through claims adjudication.

(A) For high volume providers that received Medicaid outpatient payments equaling at least $200,000 during calendar year 2004.

(i) For children's hospitals and state-owned hospitals as defined in §355.8052 of this division (relating to Inpatient Hospital Reimbursement), the percentage of allowable charges is 76.03 percent, except as described in subparagraph (C) of this paragraph.

(ii) For rural hospitals as defined in §355.8052 of this division, the percentage of allowable charges is 100 percent.

(iii) For all other providers, the percentage of allowable charges is 72.00 percent.

(B) For all providers not considered high volume providers as determined in paragraph (1)(A) of this subsection.

(i) For children's hospitals and state-owned hospitals as defined in §355.8052 of this division, the percentage of allowable charges is 72.27 percent, except as described in subparagraph (C) of this paragraph.

(ii) For rural hospitals as defined in §355.8052 of this division, the percentage of allowable charges is 100 percent.

(iii) For all other providers, the percentage of allowable charges is 68.44 percent.

(C) For children's hospitals:

(i) The percentage of allowable charges described in subparagraphs (A)(i) and (B)(i) of this paragraph are subject to the prior written approval of the Legislative Budget Board and the Governor, as required by the 2014-2015 General Appropriations Act (Article II, Health and Human Services Comm., S.B. 1, 83rd Leg., Regular Session, 2013, Rider 83 and Special Provisions Relating to All Health and Human Services Agencies, Section 44, Rate Limitations and Reporting Requirements).

(ii) If the percentages of allowable charges described in subparagraphs (A)(i) and (B)(i) of this paragraph are not approved as described in clause (i) of this subparagraph, the percentages of allowable charges described in subparagraphs (A)(iii) and (B)(iii) of this paragraph apply.

(D) For outpatient emergency department (ED) services that do not qualify as emergency visits, which are listed in the Texas Medicaid Provider Procedures Manual and other updates on the claims administrator's website, HHSC will reimburse:

(i) rural hospitals, as defined in §355.8052 of this division, an amount not to exceed 65 percent of allowable charges after application of the methodology in paragraph (2)(C) of this subsection, which will result in a payment that does not exceed 65 percent of allowable cost; and

(ii) all other hospitals, a flat fee set at a percentage of the Medicaid acute care physician office visit amount for adults.

(2) HHSC will determine an outpatient interim rate for each hospital, which is the ratio of Medicaid allowable outpatient costs to Medicaid allowable outpatient charges derived from the hospital's Medicaid cost report.

(A) For a hospital with at least one tentative cost report settlement completed prior to September 1, 2013, the interim rate is the rate in effect on August 31, 2013, except the hospital will be assigned the interim rate calculated upon completion of any future cost report settlement if that interim rate is lower.

(B) For a new hospital that does not have at least one tentative cost report settlement completed prior to September 1, 2013, the interim rate is 50 percent until the interim rate is adjusted as follows:

(i) If the hospital files a short-period cost report for its first cost report, the hospital will be assigned the interim rate calculated upon completion of the hospital's first tentative cost report settlement.

(ii) The hospital will be assigned the interim rate calculated upon completion of the hospital's first full-year tentative cost report settlement.

(iii) The hospital will retain the interim rate calculated as described in clause (ii) of this subparagraph, except it will be assigned the interim rate calculated upon completion of any future cost report settlement if that interim rate is lower.

(C) Interim claim reimbursement is determined by multiplying the amount of a hospital's outpatient allowable charges after applying any reductions to allowable charges made under paragraph (1) of this subsection by the outpatient interim rate in effect on the date of service.

(D) Cost settlement. Interim claim reimbursement determined in subparagraph (C) of this paragraph will be cost-settled at both tentative and final audit of a hospital's cost report. The calculation of allowable costs will be determined based on the amount of allowable charges after applying any reductions to allowable charges made under paragraph (1) of this subsection.

(i) Interim payments for claims with a date of service prior to September 1, 2013, will be cost settled.

(ii) Interim payments for claims with a date of service on or after September 1, 2013, will be included in the cost report interim rate calculation, but will not be adjusted due to cost settlement unless the settlement calculation indicates an overpayment.

(iii) HHSC will calculate an interim rate at tentative and final cost settlement for the purposes described in subparagraph (B) of this paragraph.

(iv) If a hospital's interim claim reimbursement for all outpatient services, excluding imaging, clinical lab and outpatient emergency department services that do not qualify as emergency visits, for the hospital's fiscal year exceeded the allowable costs for those services, HHSC will recoup the amount paid to the hospital in excess of allowable costs.

(v) If a hospital's interim claim reimbursement for all outpatient services, excluding imaging, clinical lab and outpatient emergency department services that do not qualify as emergency visits, for the hospital's fiscal year was less than the allowable costs for those services, HHSC will not make additional payments through cost settlement to the hospital for service dates on or after September 1, 2013.

(c) Outpatient hospital surgery. Outpatient hospital non-emergency surgery is reimbursed in accordance with the methodology for ambulatory surgical centers as described in §355.8121 of this subchapter (relating to Reimbursement).

(d) Outpatient hospital imaging.

(1) For all hospitals except rural hospitals, as defined in §355.8052 of this division, outpatient hospital imaging services are not reimbursed under the outpatient reimbursement methodology described in subsection (b) of this section. Outpatient hospital imaging services are reimbursed according to an outpatient hospital imaging service fee schedule that is based on a percentage of the Medicare Outpatient Prospective Payment System fee schedule for similar services. If a resulting fee for a service provided to any Medicaid beneficiary is greater than 125 percent of the Medicaid adult acute care fee for a similar service, the fee is reduced to 125 percent of the Medicaid adult acute care fee.

(2) For rural hospitals, outpatient hospital imaging services are reimbursed based on a percentage of [~~according to~~] the Medicare Outpatient Prospective Payment System [~~outpatient hospital imaging service~~] fee schedule for similar services. [~~calculated in paragraph (1) of this subsection plus add-on amounts as follows:~~]

[~~(A) for procedure codes with a fee calculated under paragraph (1) of this subsection that is less than or equal to $80.00, the rural hospital add-on amount is $3.00;~~]

[~~(B) for procedure codes with a fee calculated under paragraph (1) of this subsection that is greater than $80.00 and less than or equal to $150.00, the rural hospital add-on amount is $8.00;~~]

[~~(C) for procedure codes with a fee calculated under paragraph (1) of this subsection that is greater than $150.00 and less than or equal to $300.00, the rural hospital add-on amount is $15.00; and~~]

[~~(D) for procedure codes with a fee calculated under paragraph (1) of this subsection that is greater than $300.00, the rural hospital add-on amount is $32.00.~~]

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

Filed with the Office of the Secretary of State on October 24, 2016.

TRD-201605497
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: December 4, 2016
For further information, please call: (512) 424-6900

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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 3. STATE BANK REGULATION
SUBCHAPTER B. GENERAL

7 TAC §3.37

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §3.37, concerning the calculation of annual assessment for banks. The amendment is proposed to correct an error in the text of the bank assessment calculation table incorporated into §3.37(a).

Effective November 5, 2015, §3.37 was amended to adjust the manner in which assessments applicable to state banks are calculated, see the October 30, 2015, issue of the *Texas Register* (40 TexReg 7620). The annual assessment for a state bank is calculated as described in §3.37, based on the values in the incorporated bank assessment calculation table.

As reflected in the table, a state bank' s assessment is calculated on the basis of its assessable assets using two factors: the base assessment amount and the marginal assessment rate applicable to the bank's assessable asset group, subject to a potential surcharge or discount based on the bank's size and condition. A bank is entitled to a discount if it has total assets of $500 million or less and a CAMELS composite rating of 1 or 2. The discount reflects the reduced examination frequency applicable to a qualifying bank.

However, Step 6 of the bank assessment calculation table currently describes a bank entitled to the discount as one that "has assessable assets of $500 million or less and a CAMELS composite rating of 1 or 2." The reference to "assessable assets," a term defined in §3.36(b)(1), is incorrect and, if applied literally, could deprive some eligible banks of the discount. The size limitation should instead refer to "on-book assets" as defined in §3.36(b)(6), because examination frequency is determined based on the total of on-book assets as defined.

Accordingly, §3.37(a) is proposed to be amended to incorporate a cross-reference to defined terms in §3.36(b) to improve clarity. In addition, the bank assessment calculation table incorporated into §3.37(a) is proposed to be amended to replace the term "assessable assets" in Step 6 with the correct term, "on-book assets." No other changes are proposed in this table, and the proposed change will not result in any increase in assessments for banks.

Robert L. Bacon, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rule as amended is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Mr. Bacon also has determined that, for each year of the first five years the rule as proposed to be amended is in effect, the public benefit anticipated as a result of enforcing the rule is the correction of misleading language in order to clearly communicate how an assessment discount is applied.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed. There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed amendment must be submitted no later than 5:00 p.m. on December 5, 2016. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amendment is proposed pursuant to Finance Code §31.003(a)(4) and §31.106, which authorize the commission to adopt rules necessary or reasonable to recover the cost of supervision and regulation by imposing and collecting ratable and equitable fees. As required by Finance Code §31.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive position of state banks with regard to national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development in this state.

Finance Code §31.106 is affected by the proposed amendment.

§3.37. Calculation of Annual Assessment for Banks.

(a) Bank assessment calculation table. The annual assessment for a state bank is calculated as described in this section and paid as provided by §3.36 of this title (relating to Annual Assessments and Specialty Examination Fees), based on the values in the following table, as such values may be periodically adjusted in the manner provided by Subsection (b) of this section. Certain terms used in this section and in the following table are defined in §3.36(b). The unadjusted values in the following table are effective until September 1, 2017:

Figure: 7 TAC §3.37(a)

[~~Figure: 7 TAC §3.37(a)~~]

(b) (No change.)

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

Filed with the Office of the Secretary of State on October 21, 2016.

TRD-201605474
Catherine Reyer
General Counsel
Finance Commission of Texas
Earliest possible date of adoption: December 4, 2016
For further information, please call: (512) 475-1301

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PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 12. LOANS AND INVESTMENTS

SUBCHAPTER D. INVESTMENTS

7 TAC §12.91

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §12.91, concerning other real estate owned (OREO). The amendment is proposed to correct a structural error and clarify the authority of a bank to invest in real property for the purpose of providing temporary housing for employees under certain circumstances.

"Other real estate owned" (OREO) is generally defined by §12.91(a)(11) as real property interests not used or intended to be used as banking facilities. A state bank is not empowered to own real estate, other than for use in its own business, except in specified circumstances, such as acquisition of real estate through foreclosure of collateral securing debt previously contracted. The general prohibition on ownership of real property interests and the permissible means of acquiring OREO are set forth in §12.91(b) and (c). The bank must dispose of OREO within a specified period of time, or holding period, as set forth in §12.91(f), and §12.91(h) establishes those methods of disposition that will satisfy the statutory requirement.

Section 12.91 was amended in 2003 for the express purpose of clarifying that bank facilities include real property acquired for the purpose of providing temporary housing for employees under certain circumstances, see the July 4, 2003, issue of the *Texas Register* (28 TexReg 5149). However, the authorization was erroneously placed in §12.91(c), which describes various means of acquiring OREO (which is subject to required disposition), instead of in §12.91(h), which describes permissible means of disposing of OREO, because one means of disposal is to convert the OREO into a bank facility. Therefore, the proposed amendment would delete the text of §12.91(c)(8) and incorporate the deleted language into §12.91(h)(3).

This recently discovered misclassification has not affected bank regulation. The department and affected state banks have ap-

plied the section as if it had been correctly amended as intended in 2003, and as the section is presently proposed to be amended.

Robert L. Bacon, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rule as amended is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Mr. Bacon also has determined that, for each year of the first five years the rule as proposed to be amended is in effect, the public benefit anticipated as a result of enforcing the rule is the elimination of misleading language in favor of a corrected statement of law governing bank ownership of real property.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed. There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed amendment must be submitted no later than 5:00 p.m. on December 5, 2016. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amendment is proposed under Finance Code §31.003(a)(1), which authorizes the commission to adopt such rules as are necessary or reasonable to implement and clarify Title 3, Subtitle B of the Finance Code, and Finance Code §34.001(4), which authorizes the commission to adopt rules specifying activities that may permissibly be conducted in a bank facility.

Finance Code §34.002 and §34.003 are affected by the proposed amended section.

§12.91. Other Real Estate Owned.

(a) - (b) (No change.)

(c) Acquisition of OREO. A state bank may acquire [~~hold~~] OREO only [~~if acquired~~] by:

(1) purchase under judicial or nonjudicial foreclosure, or through a deed in lieu of foreclosure, of real estate that is security for a debt or debts previously contracted in good faith;

(2) purchase to protect its interest in a debt or debts previously contracted if prudent and necessary to avoid or minimize loss;

(3) purchase of an employee's principal residence to facilitate a change of duty assignment or relocation upon employment;

(4) with prior written approval of the banking commissioner, an exchange of OREO or personal property for real estate to avoid or minimize loss on the real estate exchanged or to facilitate the disposition of OREO;

(5) with prior written approval of the banking commissioner, purchase of additional real estate to avoid or minimize loss on OREO currently held;

(6) involuntary acquisition of an ownership interest or leasehold interest in real estate as a result of or incidental to a judicial or nonjudicial foreclosure, or by adverse possession, or by operation of law without any action on the part of the state bank to obtain such interest; or

(7) loss of designation of real estate owned or leased by the state bank as a bank facility.

[~~(8) purchase for the purpose of providing temporary housing for employees if:~~]

[~~(A) a bank has two or more locations of sufficient distance that overnight travel is required in connection with business at either location; and~~]

[~~(B) the board has certified that the cost of purchasing and maintaining the property is reasonable in comparison to other options for temporarily housing employees.~~]

(d) - (g) (No change.)

(h) Disposition of OREO. A state bank may dispose of OREO by:

(1) selling the OREO in a transaction that qualifies as a sale under regulatory accounting principles;

(2) selling the OREO pursuant to a land contract or contract for deed;

(3) retaining the OREO [~~property~~] for its own use as a bank facility, subject to the approval of the banking commissioner, including residential OREO retained for the purpose of providing temporary housing for employees if:

(A) the bank has two or more locations of sufficient distance that overnight travel is required in connection with business at either location; and

(B) the board has certified that the cost of purchasing and maintaining the property is reasonable in comparison to other options for temporarily housing employees;

(4) transferring the OREO to a majority-owned subsidiary in compliance with 12 C.F.R. §362.4(b)(5)(i);

(5) transferring the OREO for market value to an affiliate, subject to the Finance Code, §33.109, and applicable federal law, including 12 U.S.C. §§371c, 371c-1, and 1828(j);

(6) if the OREO is a master lease, obtaining a coterminous sublease or an assignment of a coterminous sublease, provided that if the bank acquires or obtains assignment of a non-coterminous sublease, the holding period during which the master lease must be divested is suspended for the duration of the sublease and will commence running again upon termination of the sublease; or

(7) entering into a transaction that does not qualify for disposal under paragraphs (1) - (5) of this section; provided that its obligation to dispose of the OREO is not met until the bank receives or accumulates from the purchaser an amount in cash, principal and interest payments, and private mortgage insurance totaling 10% of the sales price, as measured in accordance with regulatory accounting principles.

(i) (No change.)

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

Filed with the Office of the Secretary of State on October 21, 2016.

TRD-201605475

Catherine Reyer
General Counsel
Texas Department of Banking
Earliest possible date of adoption: December 4, 2016
For further information, please call: (512) 475-1301

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CHAPTER 33. MONEY SERVICES BUSINESSES

7 TAC §33.4

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §33.4, concerning payment processors. The amended rule is proposed to clarify how money transmission licensure applies to certain payment processors.

Finance Code §151.003(10) authorizes the commission to adopt rules that exclude from licensing any person, transaction, or class of persons or transactions on a finding that licensing the person or transaction is not necessary to achieve the purposes of the Act. The purposes of the Act, as expressed in Finance Code §151.102, are to preserve and protect the safety and soundness of MSBs, to protect the interests of purchasers of money services, and to protect against money laundering and similar financial crimes. The department found that regulation of certain types of payment processors is not necessary achieve these aims. The commission then adopted new rule 7 TAC §33.4 to exclude from licensure two types of payment processors. Section 33.4 essentially codified existing Texas law in order to provide clarity and guidance to money transmitters and payment processors.

The proposed amendment would exclude from licensing payment processors that are functionally identical to processors already excluded by 7 TAC §33.4(d), but which do not qualify for exclusion under the rule as currently worded. Specifically, subsection (d) excludes point of sale processors that accept funds for payment of goods and services on behalf of merchants. But when a payment processor accepts donations on behalf of charitable organizations, because no goods or services are provided to donors, the rule does not apply. However, when a person processes payments on behalf of a charitable organization, the same legal liabilities, obligations, and risks exist as when a person processes payments made to merchants for goods and services. Moreover, the same principles of agency law apply to both types of transactions with the same result. Accordingly, the amended rule is proposed to allow exclusion of processors that meet the necessary conditions when accepting payment of donations to charitable organizations.

Stephanie Newberg, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Ms. Newberg also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is greater clarity for how regulated entities can comply with the requirements of Finance Code Chapter 151.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed. The rule creates no new regulatory requirements, and creates no new licensable activity.

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed section must be submitted no later than 5:00 p.m. on December 5, 2016. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amendment is proposed under Finance Code §151.102, which authorizes the commission to adopt rules to administer and enforce Chapter 151, and under Finance Code §151.003(10) which authorizes the commission to adopt rules that exclude from licensing a person, transaction, or a class of persons or transactions.

Finance Code §151.003 and §151.302 are affected by the proposed amended section.

§33.4. Payment Processors.

(a) (No change.)

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

(1) "Payment processor" means a person employed, directly or indirectly, by one of the parties to a transaction to handle the funds involved in order to complete the transaction.

(2) "Consumer-facing entity" means a person who interacts with a consumer in order to sell or offer the person's goods or services, or to receive charitable donations.

(3) "Funds" means money or monetary value as defined by Finance Code §151.301(b)(3).

(c) (No change.)

(d) Point of Sale Payment Processors. A payment processor that receives funds from a consumer on behalf of a consumer-facing entity that either sells [~~selling~~] goods or services other than money services or accepts charitable donations does not need a license under Chapter 151, provided that:

(1) the consumer-facing entity, upon receipt of funds by the payment processor, immediately either:

(A) provides the purchased goods and services; or

(B) credits the consumer for the full amount of the funds received by the payment processor, which credit is not revocable by the consumer-facing entity, and evidences this credit in writing; and

(2) if the transaction involves goods or services, the consumer-facing entity is obligated to provide the purchased goods and services regardless of whether the payment processor transmits the funds.

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

Filed with the Office of the Secretary of State on October 21, 2016.

TRD-201605476

Catherine Reyer
General Counsel
Texas Department of Banking
Earliest possible date of adoption: December 4, 2016
For further information, please call: (512) 475-1301

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 83. REGULATED LENDERS AND CREDIT ACCESS BUSINESSES

SUBCHAPTER B. RULES FOR CREDIT ACCESS BUSINESSES

The Finance Commission of Texas (commission) proposes amendments to §§83.1002, 83.3001 - 83.3004, 83.4003, and 83.5004 in 7 TAC, Chapter 83, Subchapter B, concerning Rules for Credit Access Businesses.

In general, the purpose of the rule changes in 7 TAC, Chapter 83, Subchapter B is to update rules regarding the licensing of credit access businesses and to make technical corrections. The proposed amendments primarily relate to conforming these licensing rules to clarifying changes recently adopted in other areas regulated by the agency. Additional changes provide clarification regarding criminal history and recordkeeping.

The agency circulated an early draft of proposed changes to interested stakeholders. The agency received no written precomments on this draft.

The individual purposes of the proposed amendments to each section are provided in the following paragraphs.

In §83.1001, a proposed amendment would replace "chapter" with "subchapter" to provide the appropriate applicability of the listed definitions. Chapter 83 is divided into Subchapter A, Rules for Regulated Lenders, and Subchapter B, Rules for Credit Access Businesses. These definitions only apply to credit access businesses, and hence, should reference "subchapter" as opposed to "chapter." A similar correction is also proposed in the licensing definitions section found in §83.3001.

Also in §83.3001, the proposal would add a definition of "parent entity," specifying that this term refers to a direct owner of a licensee or applicant. This definition is intended to clarify the provisions on mergers and license transfers in §83.3003 and §83.3004, discussed later in this proposal, and is consistent with other OCCC licensing rules. A proposed amendment to current §83.3001(2) (proposed §83.3001(3)) amends the definition of "principal party" for sole proprietorships. The amendment would delete the phrase "holding a 100% ownership interest." The Internal Revenue Service allows a married couple that jointly owns and operates a business to classify the business as a proprietorship, by electing to file as a qualified joint venture. The proposed amendment is intended to remove any language suggesting that this option is not available under federal income tax law. The proposed amendment conforms to an amendment that the commission recently adopted for regulated lenders at §83.301(2)(A), effective September 8, 2016. A corresponding amendment is proposed in §83.3002(1)(A)(iv).

In §83.3002(1)(E)(i) and (ii) regarding the signature on a new license application, the rule's current language requires each owner of a proprietorship and each general partner of a partnership to sign the application. As part of an online process, the agency will only require one owner or one partner, respectively, to sign for these applicants. The proposed amendments reflect that "the owner" of a proprietorship and "one general partner" of a partnership must sign the application. Additionally, in §83.3002(2)(E), a technical correction is proposed to provide a more accurate citation to Texas Finance Code, §393.604(a)(4), which requires an applicant to provide information concerning third-party lender organizations.

Proposed amendments to §83.3003(e)(5)(B) and §83.3003(h) clarify the responsibility of the transferor and transferee during the course of a license transfer or new license application on transfer of ownership. The proposed amendments remove the phrase "joint and several" in order to avoid confusion between the responsibility described in the rule and joint and several liability in a tort context. Proposed amendments to subsection (h) also describe the parties' responsibility at different points during the license transfer process. The proposed amendments are intended to provide clarity and remove confusion that might result from overlapping provisions in the current rule. An amendment to subsection (h)(3) explains that if a transferee receives a license transfer, then the transferee's responsibility includes activity performed by the transferor before the license transfer. The proposed amendments to §83.3003 conform to a rule that the commission recently adopted for regulated lenders at §83.303, effective September 8, 2016.

In §83.3004, amendments are proposed in subsection (b) to clarify situations where a merger is a transfer of ownership. The amendments specify that if a licensee is a party to a merger that results in a new or different surviving entity other than the licensee, then the merger is a transfer of ownership, and the licensee must file a license transfer application or new license application. The amendments to subsection (b) are intended to clarify the current rule text and are consistent with the OCCC's current policy. Additionally, in subsection (c), a reference to "a new license application on transfer of ownership" is proposed for addition to provide consistent terminology with a prior amendment.

A proposed amendment to §83.4003(b)(4) clarifies the requirements for an applicant's disclosure of criminal history. Currently, §83.4003(b)(4) states that the OCCC may request "proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid." The proposed amendment adds the phrase "or are current" at the end of this provision, to account for cases where a court orders the applicant to pay an amount over time. The proposed amendment conforms to a rule that the commission recently adopted for motor vehicle sales finance licensees at §84.613(b)(4), effective May 5, 2016, and a rule that the commission recently adopted for regulated lenders at §83.404(b)(4), effective September 8, 2016.

Proposed amendments to §83.4003(c)(1) clarify the crimes that are directly related to the duties and responsibilities of a licensee that may be grounds for denial, suspension, or revocation. Under Texas Occupations Code, §53.025, state licensing authorities are required to issue guidelines relating to their use of criminal history in licensing decisions. These guidelines "must state the reasons a particular crime is considered to relate to a particular license and any other criterion that affects the decisions of the licensing authority." Texas Occupations Code, §53.025(a). Currently, the second sentence of §83.4003(c)(1) explains that crimes involving certain elements (e.g., the misrepresentation of

costs or benefits of a product or service, the improper handling of money or property entrusted to the person) are grounds for denial, suspension, or revocation of a license. A proposed amendment to §83.4003(c)(1) replaces this sentence with a more specific list of criminal offenses, in order to provide clearer guidelines to applicants. Another proposed amendment to §83.4003(c)(1) adds a statement that providing credit access business services involves compliance with reporting requirements to government agencies. This amendment is intended to describe the reason for including a criminal offense of "failure to file a government report, filing a false government report, or tampering with a government record" in the proposed list of criminal offenses. The list of criminal offenses conforms to a rule that the commission recently adopted for motor vehicle sales finance licensees at §84.613(c)(1), effective May 5, 2016, and a rule that the commission recently adopted for regulated lenders at §83.404(c)(1), effective September 8, 2016.

A proposed amendment to §83.4003(f)(2) updates a citation to the Texas Code of Criminal Procedure. Effective January 1, 2017, Texas Code of Criminal Procedure, article 42.12, §3g will be recodified to article 42A.054.

Proposed amendments to §83.5004(2)(A) update recordkeeping requirements relating to the Department of Defense's Military Lending Act (MLA) Rule, 32 C.F.R. pt. 232. The recently adopted amendments to the MLA Rule have a required compliance date of October 3, 2016. Under the amended MLA Rule, creditors are required to provide model disclosures to covered military borrowers. 32 C.F.R. §232.6. Proposed new §83.5004(2)(A)(iv)(VI) explains that a licensee must maintain any mandatory disclosure to a covered borrower under the MLA Rule. The amended MLA Rule also specifies documentation that creditors can obtain in order to determine whether a consumer is a covered military borrower. The previous version of the MLA Rule (before the recent amendments) prescribed a "covered borrower identification statement" to be signed by applicants, and creditors could use this statement to determine an applicant's covered borrower status. 32 C.F.R. §232.5 (2014 version). Under the amended MLA Rule, creditors can choose their method of determining covered borrower status, but the only ways to conclusively determine a borrower's status (and benefit from a safe harbor) are to check the borrower's status through the DOD's MLA website, or to obtain a consumer report that includes information from the DOD's MLA database. 32 C.F.R. §232.5. A proposed amendment to §83.5004(2)(A)(vii) replaces a statement that a licensee must maintain the identification of covered borrower (i.e., the statement required under the previous version of the MLA Rule) with a statement that the licensee must maintain any records obtained under 32 C.F.R. §232.5. The amendment is intended to clarify that licensees must maintain any documentation that they obtain regarding whether a consumer is a covered borrower under the MLA Rule.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the proposed amendments will be that the commission's rules will be more easily understood by licensees required to comply with the rules, and will be more easily enforced. In addition, the proposed amendments will provide more guidance and clarity to licensees.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no effect on individuals required to comply with the amendments as proposed.

The agency is not aware of any adverse economic effect on small businesses as compared to the effect on large businesses resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the agency invites comments from interested stakeholders and the public on any economic impact on small businesses, as well as any alternative methods of achieving the purpose of this proposal if the economic effect is adverse to small businesses.

Comments on the proposal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register.* At the conclusion of the 31st day after the proposal is published in the *Texas Register,* no further written comments will be considered or accepted by the commission.

DIVISION 1. GENERAL PROVISIONS

7 TAC §83.1002

These amendments are proposed under Texas Finance Code, §393.622(a), which authorizes the Finance Commission to adopt rules to necessary to enforce and administer Chapter 393, Subchapter G. Ensuring compliance with Chapter 393 is necessary to the enforcement and administration of Chapter 393, Subchapter G. In addition, the amendments to §83.5004 are proposed under Texas Finance Code, §393.622(a)(3), which authorizes the commission to adopt rules regarding periodic examinations of credit access businesses by the OCCC. The amendments to §83.4003(c)(1) are proposed under Texas Occupations Code, §53.025, which requires state licensing authorities to issue guidelines relating to their use of criminal history in licensing decisions.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 393.

§83.1002. Definitions.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 393 have the same meanings as defined in Chapter 393. The following words and terms, when used in this subchapter [~~chapter~~], will have the following meanings, unless the context clearly indicates otherwise.

(1) - (8) (No change.)

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

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7621

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DIVISION 3. APPLICATION PROCEDURES

7 TAC §§83.3001 - 83.3004

These amendments are proposed under Texas Finance Code, §393.622(a), which authorizes the Finance Commission to adopt rules to necessary to enforce and administer Chapter 393, Subchapter G. Ensuring compliance with Chapter 393 is necessary to the enforcement and administration of Chapter 393, Subchapter G.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 393.

§83.3001. Definitions.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 393, have the same meanings as defined in Chapter 393. The following words and terms, when used in this subchapter [~~chapter~~], will have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Parent entity--A direct owner of a licensee or applicant.

(3) [~~(2)~~] Principal party--An adult individual with a substantial relationship to the applicant by ownership of more than 10% of the applicant, or having control of the proposed credit access business of the applicant. The following individuals are principal parties:

(A) a proprietor [~~holding a 100% ownership interest~~];

(B) - (H) (No change.)

§83.3002. Filing of New Application.

An application for issuance of a new credit access business license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. Appropriate fees must be filed with the application and the application must include the following:

(1) Required application information. All questions must be answered.

(A) Application for license.

(i) - (iii) (No change.)

(iv) Owners and principal parties.

(I) Proprietorships. The applicant must disclose the name of any [~~the~~] individual holding an [~~a 100%~~] ownership interest in the business and the name of any individual responsible for operating the business. If requested, the applicant must also disclose the names of the spouses of these individuals.

(II) - (VI) (No change.)

(B) - (D) (No change.)

(E) Consent form. Each applicant must submit a consent form signed by an authorized individual. Electronic signatures will be accepted in a manner approved by the commissioner. The following are authorized individuals:

(i) If the applicant is a proprietor, the [~~each~~] owner must sign.

(ii) If the applicant is a partnership, one [~~each~~] general partner must sign.

(iii) - (v) (No change.)

(2) Other required filings.

(A) - (D) (No change.)

(E) Third-party lender organizations. As required by Texas Finance Code, §393.604(a)(4) [~~§393.604(4)~~], each applicant must provide the names, physical addresses, and telephone numbers of the third-party lender organizations with which the business contracts to provide services or from which the business arranges extensions of consumer credit.

(F) (No change.)

(3) (No change.)

§83.3003. Transfer of License; New License Application on Transfer of Ownership

(a) - (d) (No change.)

(e) Application requirements.

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

(5) Request for permission to operate. The application may include a request for permission to operate. The request must be in writing and signed by the transferor and transferee. The request must include all of the following:

(A) (No change.)

(B) an acknowledgement that the transferor and transferee each accept [~~joint and several~~] responsibility to any consumer and to the OCCC for any acts performed under the license while the permission to operate is in effect; and

(C) (No change.)

(f) - (g) (No change.)

(h) Responsibility.

(1) Responsibility of transferor. Before the transferee begins performing credit access business activity under a license [~~OCCC's final approval of an application described by subsection (e)~~], the transferor is responsible to any consumer and to the OCCC for all credit access business activity performed under the license.

(2) Responsibility of transferor and transferee. If a transferee begins performing credit access business activity under a license before the OCCC's final approval of an application described by subsection (e), then the transferor and transferee are each responsible to any consumer and to the OCCC for activity performed under the license during this period.

(3) [~~(2)~~] Responsibility of transferee. After a transferee begins performing credit access business activity under a license, the transferee is responsible to any consumer and to the OCCC for all credit access business activity performed under the license. The [~~In addition, a~~] transferee is responsible for any transactions that it purchases from the transferor. In addition, if the transferee receives a license transfer, then the transferee's responsibility includes all activity performed under the license before the license transfer.

[~~(3) Joint and several responsibility. If a transferee begins performing credit access business activity under a license before the OCCC's final approval of an application described by subsection (e) (including activity performed under a permission to operate), then the transferor and transferee are jointly and severally responsible to any consumer and to the OCCC. This responsibility applies to any acts performed under the license after the transferee begins performing credit~~

~~access business activity and before the OCCC's final approval of the license transfer.~~]

§83.3004. Change in Form or Proportionate Ownership.

(a) (No change.)

(b) Merger.

(1) If a licensee is a party to a merger that results in a new or different surviving entity other than the licensee, then the merger is a transfer of ownership, and the licensee must file a license transfer application or a new license application on transfer of ownership [~~A merger of a licensee is a change of ownership that results in a new or different surviving entity and requires the filing of a license transfer application or a new license application on transfer of ownership~~] pursuant to §83.3003 of this title (relating to Transfer of License; New License Application on Transfer of Ownership).

(2) If a licensee's parent entity is a party to a merger [~~If the merger of the parent entity of a licensee~~] that leads to the creation of a new entity or results in a different surviving parent entity, the licensee must advise the commissioner of the change in writing within 10 calendar days after the change, by filing a license amendment and paying the required fees as provided in §83.3010 of this title. Mergers or transfers of other entities with a beneficial interest beyond the parent entity level only require notification within 10 calendar days in accordance with the OCCC's instructions.

(c) Proportionate ownership.

(1) A change in proportionate ownership that results in the exact same owners still owning the business, and does not meet the requirements described in paragraph (2) of this subsection, does not require a transfer. Such a proportionate change in ownership does not require the filing of a license transfer application or a new license application on transfer of ownership, but does require notification when the cumulative ownership change to a single entity or individual amounts to 10% or greater. No later than 10 calendar days following the actual change, the licensee is required to notify the commissioner in writing of the change in proportionate ownership by filing a license amendment and paying the required fees as provided in §83.3010 of this title. This section does not apply to a publicly held corporation that has filed with the OCCC the most recent 10K or 10Q filing of the licensee or the publicly held parent corporation, although a license transfer application or a new license application on transfer of ownership may be required under §83.3003 of this title.

(2) (No change.)

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

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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DIVISION 4. LICENSE

7 TAC §83.4003

These amendments are proposed under Texas Finance Code, §393.622(a), which authorizes the Finance Commission to adopt rules to necessary to enforce and administer Chapter 393, Subchapter G. Ensuring compliance with Chapter 393 is necessary to the enforcement and administration of Chapter 393, Subchapter G. The amendments to §83.4003(c)(1) are proposed under Texas Occupations Code, §53.025, which requires state licensing authorities to issue guidelines relating to their use of criminal history in licensing decisions.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 393.

§83.4003. Denial, Suspension, or Revocation Based on Criminal History.

(a) (No change.)

(b) Disclosure of criminal history. The applicant must disclose all criminal history information required to file a complete application with the OCCC. Failure to provide any information required as part of the application or requested by the OCCC reflects negatively on the belief that the business will be operated lawfully and fairly. The OCCC may request additional criminal history information from the applicant, including the following:

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

(4) proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid or are current.

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a credit access business, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Providing credit access business services involves or may involve making representations to consumers regarding the terms of the contract, receiving money from consumers, remitting money to third parties, maintaining accounts, repossessing property without a breach of the peace, maintaining goods that have been repossessed, [~~and~~] collecting due amounts in a legal manner, and compliance with reporting requirements to government agencies. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation: [~~Consequently, crimes involving the misrepresentation of costs or benefits of a product or service, the improper handling of money or property entrusted to the person, failure to file a governmental report or filing a false report, or the use or threat of force against another person are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation.~~]

(A) theft;

(B) assault;

(C) any offense that involves misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery);

(D) any offense that involves breach of trust or other fiduciary duty;

(E) any criminal violation of a statute governing credit transactions or debt collection;

(F) failure to file a government report, filing a false government report, or tampering with a government record;

(G) any greater offense that includes an offense described in subparagraphs (A) - (F) of this paragraph as a lesser included offense;

(H) any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (G) of this paragraph.

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

(d) - (e) (No change.)

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a license application, or suspend or revoke a license, based on any other ground authorized by statute, including the following:

(1) (No change.)

(2) a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42A.054, [~~42.12, §3g,~~] or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(3)-(4);

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

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

Filed with the Office of the Secretary of State on October 21, 2016.

TRD-201605489
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7621

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DIVISION 5. OPERATIONAL REQUIREMENTS

7 TAC §83.5004

These amendments are proposed under Texas Finance Code, §393.622(a), which authorizes the Finance Commission to adopt rules to necessary to enforce and administer Chapter 393, Subchapter G. Ensuring compliance with Chapter 393 is necessary to the enforcement and administration of Chapter 393, Subchapter G. In addition, the amendments to §83.5004 are proposed under Texas Finance Code, §393.622(a)(3), which authorizes the commission to adopt rules regarding periodic examinations of credit access businesses by the OCCC.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 393.

§83.5004. Files and Records Required.

A licensee must maintain records for each transaction under Texas Finance Code, Chapter 393, and make those records available to the OCCC for examination. The records required by this section may be maintained by using a paper or manual recordkeeping system, electronic recordkeeping system, optically imaged recordkeeping system, or a combination of these types of systems, unless otherwise specified. All records must be prepared and maintained in accordance with generally accepted accounting principles. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(1) (No change.)

(2) Consumer's transaction file. A licensee must maintain a paper or electronic transaction file for each individual transaction under Texas Finance Code, Chapter 393, or be able to produce this information within a reasonable amount of time. The transaction file must contain documents that show the licensee's compliance with applicable state and federal law, including Texas Finance Code, Chapter 393. If a substantially equivalent electronic record for any of the following documents exists, a paper copy of the record does not have to be included in the transaction file if the electronic record can be accessed upon request.

(A) The transaction file must include the following documentation for each transaction under Texas Finance Code, Chapter 393:

(i) - (iii) (No change.)

(iv) all legally required disclosures provided in connection with the transaction, including:

(I) - (V) (No change.)

(VI) any mandatory disclosure to a covered borrower under the Department of Defense's Military Lending Act Rule, 32 C.F.R. §232.6;

(v) - (vi) (No change.)

(vii) any documentation of whether the consumer is a covered borrower under the Department of Defense's Military Lending Act Rule, 32 C.F.R. Part 232, including any records obtained under [~~the identification of covered borrower described by~~] 32 C.F.R. §232.5;

(viii) - (x) (No change.)

(B) - (C) (No change.)

(3) - (12) (No change.)

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

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 55. RULES FOR ADMINISTRATIVE SERVICES

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas

Administrative Code (TAC), Chapter 55, Subchapter A, §55.1 and §55.10; and proposes new rules Subchapter F, §55.100 and §55.101, regarding Rules for Administrative Services.

The Texas Legislature enacted Senate Bill 20 (S.B. 20), 84th Legislature, Regular Session (2015), which made comprehensive changes to state agency contracting, purchasing, and accounting procedures. In addition, Chapter 2261 of the Texas Government Code requires certain state agencies to establish and adopt by rule a policy that clearly defines the contract monitoring roles and responsibilities, if any, of internal staff and other inspection, investigative, or audit staff. The proposed amendments and new rules are necessary to implement S.B. 20 and bring the Department into compliance with Texas Government Code, Chapter 2261.

The proposed amendments to §55.1 add Texas Government Code, Chapters 2156, 2161, 2260, and 2261 as statutory authority for the rule chapter.

The proposed amendments to §55.10 add definitions for the Department's "Financial Services Division" and "Financial Services Division Director."

The proposed new §55.100 will bring the Department into compliance with §2261.202 of the Government Code, which requires state agencies that make procurements under Chapter 2261 to "establish and adopt by rule a policy that clearly defines the contract monitoring roles and responsibilities, if any, of internal audit staff and other inspection, investigative, or audit staff."

The proposed new §55.101 will bring the Department into compliance with §2261.253(c) of the Government Code, which requires state agencies to adopt procedures to identify contracts requiring enhanced monitoring, report information on those contracts to the agency's governing body, and provide a mechanism for reporting of serious risk to the agency's governing body.

Brian E. Francis, Executive Director, has determined that for the first five-year period the proposed amendments and new rules are in effect, there will be no direct cost to state or local government as a result of enforcing or administering the proposed amendments and new rules. There is no estimated increase or decrease in revenue to the state as a result of the proposed amendments and new rules.

Mr. Francis also has determined that for each year of the first five-year period the proposed amendments and new rules are in effect, the public will benefit by having greater oversight and transparency in contract management.

Further, Mr. Francis has found that there will be no anticipated economic effect on small and micro-businesses under the proposed amendments and new rules.

Since the agency has determined that the proposed amendments and new rules will have no adverse economic effect on small or micro-businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032; or electronically to erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §55.1, §55.10

The amendments are proposed under Texas Occupations Code, Chapter 51, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. In addition, the amendments and new rules are proposed under Texas Government Code, Chapter 2156, which requires state agencies making purchases to adopt the Texas Comptroller of Public Accounts rules related to bid opening and tabulation; Texas Government Code, Chapter 2161, which requires a state agency to adopt the Texas Comptroller of Public Accounts' rules as the agency's own rules for construction projects and purchases of goods and services; Texas Government Code, Chapter 2260, which requires each state agency to develop rules to address contract disputes with vendors and to resolve those disputes through negotiation and/or mediation; and Texas Government Code, Chapter 2261, which sets forth statewide standards for contracting and oversight of agency contracts.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51. In addition, the following statutes may be affected: Texas Agriculture Code, Chapters 301 and 302 (Weather Modification and Control); Texas Education Code, Chapter 1001 (Driver Education and Safety); Texas Health and Safety Code, Chapters 754 (Elevators, Escalators, and Related Equipment) and 755 (Boilers); Texas Government Code, Chapter 469 (Elimination of Architectural Barriers); Texas Labor Code, Chapters 91 (Professional Employer Organizations) and 92 (Temporary Common Worker Employers); and Texas Occupations Code Chapters 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Licensed Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 605 (Orthotists and Prosthetists); and 701 (Dietitians); 802 (Dog or Cat Breeders); 953 (For-Profit Legal Service Contract Companies); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1601 (Barbers); 1602 (Cosmetologists); 1603 (Regulation of Barbering and Cosmetology); 1703 (Polygraph Examiners); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2306 (Vehicle Protection Product Warrantors); 2308 (Vehicle Towing and Booting); and 2309 (Used Automotive Parts Recyclers). No other statutes, articles, or codes are affected by the proposal.

§55.1. Authority.

This chapter is promulgated under the authority of Texas Occupations Code, Chapter 51 and Texas Government Code, Chapters 2156, 2161, 2260, and 2261. This chapter applies except in the event of a conflict with other statutory provisions related to specific programs regulated by the Commission and the Department.

§55.10. Definitions.

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

(1) - (9) (No change.)

(10) Financial Services Division--The division of the department tasked with performing the functions of accounting, budgeting, purchasing, contract management, and financial reporting.

(11) Financial Services Division Director--The person who directs and oversees the functions of the Financial Services Division.

(12) [~~(10)~~] General Counsel--The attorney designated by the Texas Department of Licensing and Regulation, who provides legal representation to the Commission and the Department.

(13) [~~(11)~~] Interested parties--All persons who have timely submitted bids or proposals to provide goods or services pursuant to a contract with the Department or who have requested in writing to the Department to be notified of a vendor protest.

(14) [~~(12)~~] Mediation--A confidential, informal dispute resolution process in which an impartial person, the mediator, facilitates communication between or among the parties to promote reconciliation, settlement, or understanding among them.

(15) [~~(13)~~] Mediator--The person who presides over a mediation proceeding. The mediator shall encourage and assist the parties in reaching a settlement but may not compel or coerce the parties to enter into a settlement agreement. The mediator may be a Department employee, an employee from another Texas state agency, or a person in the mediation profession who is not a Texas state employee ("private mediator").

(16) [~~(14)~~] Parties--The contractor and the Department, having entered into a contract in connection with which a claim of breach of contract has been filed under Subchapter D.

(17) [~~(15)~~] Person--Any individual, partnership, corporation, or other legal entity, including a state agency or governmental subdivision.

(18) [~~(16)~~] Protesting Party--Any actual or prospective bidder, offeror, proposer, or contractor who submits a protest to the Department under Subchapter C.

(19) [~~(17)~~] Purchasing Officer--A Departmental employee who has received certification as a Texas Public Purchaser and who is responsible for assisting with Departmental purchases, and who has been designated the Purchasing Officer for the purchase in question.

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

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Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-8179

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SUBCHAPTER F. CONTRACT MONITORING

16 TAC §55.100, §55.101

The new rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. In addition, the amendments and new rules are proposed under Texas Government Code, Chapter 2156, which requires state agencies making purchases to adopt the Texas Comptroller of Public Accounts rules related to bid opening and tabulation; Texas Government Code, Chapter 2161, which requires a state agency to adopt the Texas Comptroller of Public Accounts' rules as the agency's own rules for construction projects and purchases of goods and services; Texas Government Code, Chapter 2260, which requires each state agency to develop rules to address contract disputes with vendors and to resolve those disputes through negotiation and/or mediation; and Texas Government Code, Chapter 2261, which sets forth statewide standards for contracting and oversight of agency contracts.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51. In addition, the following statutes may be affected: Texas Agriculture Code, Chapters 301 and 302 (Weather Modification and Control); Texas Education Code, Chapter 1001 (Driver Education and Safety); Texas Health and Safety Code, Chapters 754 (Elevators, Escalators, and Related Equipment) and 755 (Boilers); Texas Government Code, Chapter 469 (Elimination of Architectural Barriers); Texas Labor Code, Chapters 91 (Professional Employer Organizations) and 92 (Temporary Common Worker Employers); and Texas Occupations Code Chapters 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Licensed Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 605 (Orthotists and Prosthetists); and 701 (Dietitians); 802 (Dog or Cat Breeders); 953 (For-Profit Legal Service Contract Companies); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1601 (Barbers); 1602 (Cosmetologists); 1603 (Regulation of Barbering and Cosmetology); 1703 (Polygraph Examiners); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2306 (Vehicle Protection Product Warrantors); 2308 (Vehicle Towing and Booting); and 2309 (Used Automotive Parts Recyclers). No other statutes, articles, or codes are affected by the proposal.

§55.100. Contract Monitoring Responsibilities.

(a) This section implements Government Code, §2261.202.

(b) Contract monitoring shall be conducted by staff of the financial services division, subject to the oversight of the financial services division director.

(c) Subject to the oversight of the financial services division director, internal auditors and staff of the financial services division shall perform any additional contract monitoring specifically directed by the audit committee of the commission, or warranted by the results of the Department's annual risk assessment.

§55.101. Enhanced Contract Monitoring.

(a) This section implements Government Code, §2261.253(c).

(b) For each contract entered into by the department, the financial services division director, or his or her designee, will determine if enhanced monitoring of the contract or the contractor's performance is required.

(c) In determining whether a contract requires enhanced monitoring, the following factors may be considered, to the extent applicable:

(1) The estimated dollar amount of the contract;

(2) The total contract period, including renewal options;

(3) The extent and number of persons impacted by the contract;

(4) The impact to the department and the state if contract deliverables are delayed, or if the contractor fails to deliver as required in the contract;

(5) The complexity of funding sources for the contract;

(6) The complexity of requirements and resources to be managed pursuant to the contract;

(7) The extent of department resources readily available to manage the contract;

(8) The impact of the contract on the health and safety of the general public;

(9) The impact on the department's business processes;

(10) The complexity of the methodology for calculating and making payments under the contract;

(11) The extent of training required for end users as a result of the contract;

(12) The vendor's experience delivering the contracted goods or services, and, if applicable, the vendor's performance under previous department contracts; and

(13) With regard to a technology contract, the level of software customization required and the impact on existing technology applications or infrastructure.

(d) The financial services division director, or his or her designee, shall maintain a record of all contracts requiring enhanced monitoring. Contracts identified for enhanced monitoring shall be reported to the commission at least quarterly.

(e) The financial services division director shall notify the commission immediately of any serious issue or risk that is identified with respect to a contract requiring enhanced monitoring.

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

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Brian E. Francis
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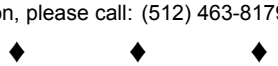

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER B. PROVISIONS FOR THE TUITION EQUALIZATION GRANT PROGRAM

19 TAC §22.29

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code §22.29 (Allocation and Reallocation of Funds), concerning the Provisions for the Tuition Equalization Grant Program. The annual Tuition Equalization Grant (TEG) Need Survey and the annual Financial Aid Database System (FADS) report have been identified as having a significant overlap in data. Based on this, and in order to reduce the annual reporting requirements for institutions, the Coordinating Board is proposing to phase out the annual TEG Need Survey in its current form and instead build the annual TEG Need Survey using FADS data. To do so requires a modification to the TEG allocation process. The intent of the amendments is to incorporate into existing rule changes and provisions developed by the Negotiated Rule-Making Committee. Language has been changed for the methodology used to determine institutional allocations. The newly amended statute will affect students enrolling in private, independent and non-profit institutions of higher education. Changes to these sections are made in accordance with Senate Bill 215, passed by the 83rd Texas Legislature, Regular Session, which called for the Coordinating Board to engage institutions of higher education in a negotiated rulemaking process as described by Chapter 2008, Government Code, "when adopting a policy, procedure, or rule relating to …the allocation or distribution of funds, including financial aid or other trusteed funds under §61.07761".

Specifically, §22.29 is amended to include the methodology with which institutional allocations will be determined. Section 22.29(a) adds language to indicate that allocations for fiscal year 2019 and prior will use the TEG Need Survey Report provided by institutions to the Coordinating Board. New §22.29(b) adds language as to the methodology used to handle institutions' request for funds and the sources of data used for determining allocations for fiscal year 2020 and later. Section 22.29(b) - (c) have been renumbered accordingly.

Dr. Charles W. Puls, Deputy Assistant Commissioner, Student Financial Aid Programs, for the Texas Higher Education Coordinating Board has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending these sections.

Dr. Puls has also determined that for the first five years the amendments are in effect, the public benefit anticipated as a result of administering the sections will be reduction of annual reporting requirements for participating institutions. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to Charles W. Puls, Deputy Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, or via e-mail at Charles.Puls@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under Texas Education Code, §61.229, which provided the Coordinating Board with the authority to adopt rules to implement the Tuition Equalization Grants Program.

The amendments relate to Texas Administrative Code, Chapter 22, §22.29.

§22.29. Allocation and Reallocation of Funds.

(a) Allocations for fiscal year 2019 and prior. Allocations for the TEG Program are to be determined on an annual basis as follows:

(1) - (8) (No change.)

(b) Allocations for Fiscal Year 2020 and Later. Allocations for the TEG Program are to be determined on an annual basis as follows:

(1) All eligible institutions will be invited to participate; those choosing not to participate will be left out of the calculations for the relevant year.

(2) The allocation base for each institution choosing to participate will be its three-year average share of the total statewide amount of the Total TEG Need, subject to the limits in Texas Education Code, §61.227(c) and (e), based on the students who met the following criteria:

(A) Enrollment on at least a three-fourths or three-quarters basis;

(B) Completed either the FAFSA or TASFA and demonstrated Adjusted Gross Need greater than zero;

(C) Maintain satisfactory academic progress in his or her program of study as required by §22.24(b) of this subchapter;

(D) Classified as a Resident of Texas, unless such student is a National Merit scholarship finalist and has received a scholarship in the amount required to be eligible to pay Texas resident tuition under the Texas Education Code §54.213(a);

(E) Be enrolled in an approved institution in an individual degree plan leading to a first associates degree, first baccalaureate degree, first master's degree, first professional degree, or first doctoral degree;

(F) Not be enrolled in a degree plan that leads to ordination, licensure to preach, or a career in church work;

(G) Be required to pay more tuition than is required at a comparable public college or university and be charged no less than the tuition required of all similarly situated students at the institution; and

(H) Not be a recipient of any form of athletic scholarship.

(3) Sources of data.

(A) For allocations for Fiscal Year 2020. The sources of data used for the allocations are the certified Fiscal Year 2018 Financial Aid Database (FADS) report and the fall 2015 and fall 2016 completed TEG Need Survey reports submitted to the Board by the institutions.

(B) For allocations for Fiscal Year 2021. The sources of data used for the allocations are the certified Fiscal Year 2018 and 2019 FADS reports and the fall 2016 completed TEG Need Survey report submitted to the Board by the institutions.

(C) For allocations for Fiscal Year 2022 and Later. The source of data used for the allocations are the three most recently certified FADS reports submitted to the Board by the institutions.

(4) A student's TEG need may not exceed the least of his or her adjusted gross need, tuition differential, or the TEG maximum award as set in accordance with Texas Education Code, §61.227(c).

(5) A student's exceptional TEG need plus TEG need may not exceed the least of the student's adjusted gross need, tuition differential or 150 percent of the current year's statutory TEG maximum award as set in accordance with Texas Education Code, §61.227(c).

(6) The maximum amount of need that may be recorded for any single student in the allocation calculation may not exceed the sum of his or her TEG need plus his or her exceptional TEG need.

(7) The total amount allocated for an institution may not exceed the sum of the individual maximum TEG need for all students calculated using the sources of data outlined in paragraph (3) of this subsection.

(8) Verification of Data. The TEG allocation spreadsheet will be provided to the institutions for review and the institutions will be given 10 working days, beginning the day of the notice's distribution and excluding State holidays, to confirm that the spreadsheet accurately reflects the data they submitted or to advise Board staff of any inaccuracies.

(c) [~~(b)~~] Reallocations. Institutions will have until February 20 or the first workday thereafter if it falls on a holiday or the weekend to encumber the program funds that have been allocated to them. On that date, institutions lose claim to any funds not yet drawn down from the Board for immediate disbursement to students. The funds released in this manner are available to the Board for reallocation to other institutions. If necessary for ensuring the full use of funds, subsequent reallocations may be scheduled until all funds are awarded and disbursed.

(d) [~~(c)~~] Reductions in Funding.

(1) If funding for the program is reduced during the first year of a biennium, the Board may choose to forego reallocations to better distribute the reduction across the biennium.

(2) If funding is reduced prior to the beginning of the second year of a biennium, the Board may take steps to help distribute the impact of reduced funding across all participating institutions by an across-the-board percentage decrease in all institutions' allocations.

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

Filed with the Office of the Secretary of State on October 24, 2016.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: December 4, 2016
For further information, please call: (512) 427-6114

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 194. NON-CERTIFIED RADIOLOGIC TECHNICIANS

The Texas Medical Board on behalf of the Texas Board of Medical Radiologic Technology ("MRT Board") proposes the repeal of §§194.1 - 194.9 and 194.11, concerning Non-Certified Radiologic Technicians, and also proposes new Subchapter A, §§194.1 - 194.33, concerning Medical Radiologic Technol-

ogy, and new Subchapter B, §§194.34 - 194.43, concerning Non-Certified Technicians Supervised by a Physician.

The Texas Legislature enacted Senate Bill 202, 84th Legislature Regular Session (2015), which transferred the medical radiologic technology licensing program from the Department of State Health Services (DSHS) to the Texas Medical Board and the Texas Board of Medical Radiologic Technology, effective September 1, 2015. The MRT Board acts as an advisory board to the Texas Medical Board. The Medical Board acts as an oversight board to the MRT Board, and provides administrative support necessary to carry out the MRT regulatory program functions.

Chapter 194 is proposed in accordance with the changes to Chapter 601 of the Texas Occupations Code enacted by Senate Bill 202, and are necessary to enable the MRT Board to perform the necessary regulatory program functions, including licensure, enforcement, and disciplinary action or remedial plan compliance.

A stakeholder meeting was conducted on June 28, 2016. The stakeholders' comments were incorporated into the proposal of Chapter 194.

The MRT Board met on September 20, 2016, to consider a draft of the proposed rules and recommended publishing them in the *Texas Register* for public comment.

The MRT Board proposes to amend Chapter 194 by changing the chapter's title and adding new §§194.1 - 194.43, delineating regulations related to the medical radiologic technology regulatory program functions. The language in existing §§194.1 - 194.9 and 194.11 has been relocated to new §§194.34 - 194.43. The proposal adds rules that establish qualifications, procedures, requirements and processes that enable the MRT Board to regulate the practice of medical radiologic technology. Remaining existing rules related to registration and physician supervision of non-certified technicians are renumbered to reflect the addition of the new rules.

The proposal aligns processes and procedures related to regulating the practice of medical radiologic technology with the Medical Board's current processes and procedures. The proposal further enables the Medical Board to perform the various administrative functions related to licensing, compliance, and enforcement. Additionally, the proposal benefits the public by setting forth practice and licensing requirements as they pertain to medical radiologic technologists, non-certified technicians, training programs, instructors, and other individuals regulated by the Act. The rules clarify the MRT Board's authority and help insure the safe practice of medical radiologic technology in Texas. Moreover, the proposed rules provide a mechanism for individuals regulated under the Act to obtain treatment through the Texas Physician Health Program for health conditions that impair, or may impair, that individual's practice. The proposed rules are organized to assist the public and the regulated community in easily locating rules and regulations specific to licensing, compliance, and enforcement related to the practice of medical radiologic technology in Texas.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the rules, as proposed, are in effect the public benefit anticipated as a result of enforcing the proposed rules will be to implement the new statutory provisions of Chapter 601 of the Texas Occupations Code, as enacted by Senate Bill 202, which transfers the primary responsibility of regulating the practice of medical radiologic technology to the MRT Board, with oversight and administrative support provided by the Medical Board.

Mr. Freshour has also determined that for the first five-year period the sections are in effect there will be no fiscal implication to state or local government as a result of enforcing the sections as proposed. The effect to individuals required to comply with the sections, as proposed, will be the fees associated with licensure and registration. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

22 TAC §§194.1 - 194.9, 194.11

The repeals are proposed under the authority of the Texas Occupations Code Annotated, §601.052, which provide authority for the MRT Board to adopt rules as necessary to: regulate the practice of medical radiologic technology; enforce the requirements set forth by, and perform its duties under Chapter 601 of the Texas Occupations Code.

No other statutes, articles or codes are affected by this proposal.

§194.1. Purpose.

§194.2. Definitions.

§194.3. Registration.

§194.4. Annual Renewal.

§194.5. Non-Certified Technician's Scope of Practice.

§194.6. Suspension, Revocation or Nonrenewal of Registration.

§194.7. Disciplinary Guidelines.

§194.8. Procedure.

§194.9. Compliance.

§194.11. Construction.

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

Filed with the Office of the Secretary of State on October 22, 2016.

TRD-201605519
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Earliest possible date of adoption: December 4, 2016
For further information, please call: (512) 305-7016

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CHAPTER 194. MEDICAL RADIOLOGIC TECHNOLOGY

SUBCHAPTER A. CERTIFICATE HOLDERS, NON-CERTIFIED TECHNICIANS, AND OTHER AUTHORIZED INDIVIDUALS OR ENTITIES

22 TAC §§194.1 - 194.33

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §601.052, which provide authority for the MRT Board to adopt rules as necessary to: regulate the practice of medical radiologic technology; enforce the requirements set forth by, and perform its duties under Chapter 601 of the Texas Occupations Code.

No other statutes, articles or codes are affected by this proposal.

§194.1. Purpose.

The purpose of these rules is to implement the provisions of the Medical Radiologic Technologist Certification Act, Texas Occupations Code Chapter 601.

§194.2. Definitions.

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

(1) ABHES--Accrediting Bureau of Health Education Schools.

(2) Act--The Medical Radiologic Technologist Certification Act, Texas Occupations Code, Chapter 601.

(3) Active duty--A person who is currently serving as full-time military service member in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by §437.001, Government Code, or similar military service of another state.

(4) Agency--The divisions, departments, and employees of the board, Texas Medical Board, Texas Physician Assistant Board, Texas State Board of Acupuncture Examiners, Medical Physicist Licensure Advisory Committee; Perfusionist Licensure Advisory Committee; and Texas Board of Respiratory Care.

(5) APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001 as amended.

(6) Applicant--A person who files an application with the board for a certificate, including a temporary certificate, general, limited, or a provisional certificate; or a person or program who files an application with the board for approval to act as an instructor or educational program.

(7) Armed forces of the United States--Army, Navy, Air Force, Coast Guard, or Marine Corps of the United States or a reserve unit of one of those branches of the armed forces.

(8) ARRT--The American Registry of Radiologic Technologists and its predecessor or successor organizations.

(9) ASRT--The American Society of Radiologic Technologists and its predecessor or successor organizations.

(10) Board--The Texas Board of Medical Radiologic Technology.

(11) Cardiovascular (CV)--Limited to radiologic procedures involving the use of contrast media and or ionizing radiation for the purposes of diagnosing or treating a disease or condition of the cardiovascular system.

(12) Certificate--A medical radiologic technologist certificate, general, limited or provisional, issued by the board.

(13) Dentist--A person who is licensed by the Texas State Board of Dental Examiners as a doctor of dentistry.

(14) Direct supervision--Supervision and control by a medical radiologic technologist or a practitioner who:

(A) assumes legal liability for a student employed to perform a radiologic procedure and enrolled in a program that meets the requirements adopted under Section 601.052; and

(B) is physically present during the performance of the radiologic procedure to provide consultation or direct the action of the student.

(15) Education program--Clinical training or any other program offered by an organization approved by the advisory board that:

(A) has a specified objective;

(B) includes planned activities for participants; and

(C) uses an approved method for measuring the progress of participants.

(16) Executive director--The executive director of the Agency or the authorized designee of the executive director.

(17) Federally qualified health center (FQHC)--A health center as defined by 42 United States Code, §1396d(L)(2)(B).

(18) Fluorography--Hard copy of a fluoroscopic image; also known as spot films.

(19) Fluoroscopy--The practice of examining tissues using a fluorescent screen, including digital and conventional methods.

(20) General certification--An authorization to perform radiologic procedures.

(21) Good professional character--An applicant for licensure must not be in violation of or have committed any act described in the Medical Radiologic Technologist Certification Act , §§601.302-.303, Texas Occupations Code Annotated.

(22) Hospital-- A facility that:

(A) is:

(i) a general hospital or a special hospital, as those terms are defined by §241.003, Health and Safety Code, including a hospital maintained or operated by the state; or

(ii) a mental hospital licensed under Chapter 577, Health and Safety Code; and

(B) has an organized medical staff.

(23) Instructor--An individual approved by the board to provide instruction and training in the discipline of medical radiologic technology in an educational setting.

(24) JRCERT--The Joint Review Committee on Education in Radiologic Technology.

(25) JRCNMT--The Joint Review Committee on Educational Programs in Nuclear Medicine Technology.

(26) Limited certification--An authorization to perform radiologic procedures that are limited to specific parts of the human body.

(27) Limited medical radiologic technologist (LMRT)--A person who holds a limited certificate issued under the Act, and who under the direction of a practitioner, intentionally administers radiation to specific parts of the bodies of other persons for a medical purpose. The limited categories are the skull, chest, spine, extremities, podiatric, chiropractic and cardiovascular. The term does not include a practitioner.

(28) Medical Board --The Texas Medical Board.

(29) Medical radiologic technologist (MRT)--A person who holds a general certificate issued under the Act, and who under the direction of a practitioner, intentionally administers radiation to other persons for medical purpose. The term does not include a practitioner.

(30) Military service member--A person who is on active duty.

(31) Military spouse--A person who is married to a military service member.

(32) Military veteran--A person who served on active duty and who was discharged or released from active duty.

(33) Mobile service operation--The provision of radiation machines and personnel at temporary sites for limited time periods. The radiation machines may be fixed inside a motorized vehicle or may be a portable radiation machine that may be removed from the vehicle and taken into a facility for use.

(34) NMTCB--Nuclear Medicine Technology Certification Board and its successor organizations.

(35) Non-certified technician (NCT)-- A person who has completed a training program approved by the board and who is registered with the board under this chapter. An NCT may not perform a radiologic procedure which has been identified as dangerous or hazardous.

(36) Open Meetings Act--Texas Government Code Annotated, Chapter 551 as amended.

(37) Party--The board and each person named or admitted as a party in a hearing before the State Office of Administrative Hearings.

(38) Pediatric--Pertaining to radiologic procedures performed on a person who is between the age range of fetus to age 18 or as otherwise defined by Texas law, when the growth and developmental processes are generally complete. These rules do not prohibit a practitioner from taking into account the individual circumstances of each patient and determining if the upper age limit requires variation by not more than two years.

(39) Physician--A person licensed by the Texas Medical Board as a doctor of medicine or osteopathy.

(40) Physician assistant--A person licensed by the Texas Physician Assistant Board to practice as a physician assistant.

(41) Podiatrist--A person licensed by the Texas State Board of Podiatric Medical Examiners as a doctor of podiatry.

(42) Practitioner--A chiropractor, dentist, physician, or podiatrist who prescribes radiologic procedures for other persons.

(43) Presiding Officer--The person designated by the Governor to serve as the presiding officer of the board.

(44) Provisional medical radiologic technologist (PMRT)--A person who holds a provisional certificate issued under the Act, and who, under the direction of a practitioner, intentionally administers radiation to other persons for a medical purpose. The authorization to perform radiologic procedures under the provisional certificate shall not exceed 180 days from date of the certificate's issuance. The term does not include a practitioner.

(45) Radiation--Ionizing radiation:

(A) in amounts beyond normal background levels; and

(B) from a source such as a medical or dental radiologic procedure.

(46) Radiologic procedure--A procedure or article, including a diagnostic X-ray or a nuclear medicine procedure, that:

(A) is intended for use in:

(i) the diagnosis of disease or other medical or dental conditions in humans; or

(ii) the cure, mitigation, treatment, or prevention of disease in humans; and

(B) achieves its intended purpose through the emission of ionizing radiation.

(47) Radiologic technology--The administration of radiation to a person for a medical purpose.

(48) Registered nurse--A person licensed by the Texas Board of Nursing to practice professional nursing.

(49) Registry--A list of names and other identifying information of non-certified technicians registered with the board.

(50) SACS--The Southern Association of Colleges and Schools, Commission on Colleges.

(51) Sponsoring institution--A hospital, educational, other facility, or a division thereof, that offers or intends to offer a course of study in medical radiologic technology.

(52) State--Any state, territory, or insular possession of the United States and the District of Columbia.

(53) Submit--The term used to indicate that a completed item has been actually received and date-stamped by the board along with all required documentation and fees, if any.

(54) Supervision--Responsibility for and control of quality, radiation safety and protection, and technical aspects of the application of ionizing radiation to human beings for diagnostic and/or therapeutic purposes.

(55) Temporary certification, general or limited--An authorization to perform radiologic procedures for a limited period, not to exceed one year.

(56) X-ray equipment--An x-ray system, subsystem, or component thereof. For the purposes of this rule, the types of X-ray equipment are as follows:

(A) portable X-ray equipment--X-ray equipment mounted on a permanent base with wheels and/or casters for moving while completely assembled. Portable X-ray equipment may also include equipment designed to be hand-carried;

(B) stationary X-ray equipment--X-ray equipment that is installed in a fixed location; or

(C) mobile stationary X-ray equipment--X-ray equipment that is permanently affixed to a motor vehicle or trailer with appropriate shielding.

§194.3. Meetings and Committees.

(a) The board shall conduct regular meetings at least three times a year to carry out the mandates of the Act. The meetings shall be held at times and places the board considers most convenient for applicants and board members.

(b) Special meetings may be called by the presiding officer of the board, by resolution of the board, or upon written request to the presiding officer of the board signed by at least three members of the board.

(c) Board and committee meetings shall, to the extent possible, be conducted pursuant to the provisions of Robert's Rules of Order Newly Revised unless, by rule, the board adopts a different procedure.

(d) The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the will of the governor. The board, at a regular meeting or special meeting, shall elect from its membership an assistant presiding officer and secretary for one year. The board shall elect from its membership other officers as the board considers necessary to carry out the board's duties.

(e) All elections and any other issues requiring a vote of the board shall be decided by a simple majority of the members present. If more than two candidates contest an election or if no candidate receives a majority of the votes cast on the first ballot, a second ballot shall be conducted between the two candidates receiving the highest number of votes. A quorum for transaction of any business by the board shall be one more than half the board's membership at the time of the meeting. A quorum is not required for board action related to examining the credentials of applicants, acting as a panel for a temporary suspension proceeding held under §601.306 of the Act, or conducting an informal meeting under §601.311 of the Act.

(f) The board, at a regular meeting or special meeting, upon majority vote of the members present, may remove the secretary from office.

(g) The following are standing and permanent committees of the board. Each committee, with the exception of the Executive Committee, shall consist of at least one board member who is a licensed physician, one board member who is a licensed medical radiologic technologist, and one public board member. In the event that a committee does not have a representative of one or more of these groups, the presiding officer shall appoint additional members as necessary to maintain this composition. The Executive Committee shall include the presiding officer, secretary, and other members as named by the presiding officer. The presiding officer shall name the chair and assign the members of the other committees. The responsibilities and authority of these committees shall include those duties and powers as defined in paragraphs (1) - (3) of this subsection and such other responsibilities and authority which the board may from time to time delegate to these committees.

(1) Licensure Committee.

(A) Draft and review proposed rules regarding licensure, and make recommendations to the board regarding changes or implementation of such rules.

(B) Draft and review proposed rules pertaining to the overall licensure process, and make recommendations to the board regarding changes or implementation of such rules.

(C) Receive and review applications for licensure in the event the eligibility for licensure of an applicant is in question.

(D) Present the results of reviews of applications for licensure, and make recommendations to the board regarding licensure of applicants whose eligibility is in question.

(E) Make recommendations to the board regarding matters brought to the attention of the Licensure Committee.

(F) Oversee and make recommendations to the board regarding any aspect of the examination process including the approval of an appropriate licensure examination and the administration of such an examination and documentation and verification of records from all applicants for licensure.

(2) Disciplinary Committee.

(A) Draft and review proposed rules regarding the enforcement of the Act.

(B) Oversee the disciplinary process and give guidance to the board and staff regarding methods to improve the disciplinary process and more effectively enforce the Act.

(C) Monitor the effectiveness, appropriateness, and timeliness of the disciplinary process.

(D) Make recommendations regarding resolution and disposition of specific cases and approve, adopt, modify, or reject recommendations from staff or representatives of the board regarding actions to be taken on pending cases. Approve dismissals of complaints and closure of investigations.

(E) Make recommendations to the board and staff regarding policies, priorities, budget, and any other matters related to the disciplinary process and enforcement of the Act.

(F) Make recommendations to the board regarding matters brought to the attention of the Disciplinary Committee.

(3) Executive Committee.

(A) Ensure records are maintained of all committee actions.

(B) Review requests from the public to appear before the board and provide opportunities for the public to speak regarding issues related to the regulation of the practice of radiologic technology.

(C) Review inquiries regarding policy or administrative procedure.

(D) Delegate tasks to other committees.

(E) Take action on a matter of urgency that may arise between board meetings. Such matters shall be presented to the board at the next board meeting.

(F) Assist the Medical Board in the organization, preparation, and delivery of information and testimony to the Legislators and committees of the Legislature.

(G) Formulate and make recommendations to the board regarding future board goals and objectives and the establishment of priorities and methods for their accomplishment.

(H) Study and make recommendations to the board regarding the role and responsibility of the board officers and committees.

(I) Review staff reports regarding finances and the budget.

(J) Make recommendations to the board regarding matters brought to the attention of the Executive Committee.

(h) Meetings of the board and of its committees are open to the public unless such meetings are conducted in executive session pursuant to the Open Meetings Act or the Act. In order that board meetings may be conducted safely, efficiently, and with decorum, attendees may not engage in disruptive activity that interferes with board proceedings. The public shall remain within those areas of the board offices and board meeting room designated as open to the public. Members of the public shall not address or question board members during meetings unless recognized by the board's presiding officer pursuant to a published agenda item.

(i) Journalists have the same right of access as other members of the public to board meetings conducted in open session and are subject to the same rules. Observers of a board meeting may not disrupt the meeting or disturb its participants. Observers may make audio or vi-

sual recordings of such proceedings conducted in open session, as long as the recording activities do not disrupt the meeting. Observers who make audio or visual records are subject to the following limitations: upon request made by the board's presiding officer, camera operators must periodically extinguish artificial lights to allow excessive heat to dissipate; camera operators may not assemble or disassemble equipment while the board is in session and conducting business; persons seeking to position microphones for recording board proceedings may not disrupt the meeting or disturb participants. Journalists may conduct interviews in the reception area of the agency's offices or, at the discretion of the board's presiding officer, in the meeting room after recess or adjournment. No interview may be conducted in the hallways of the agency's offices. The board's presiding officer may exclude from a meeting any person who, after being duly warned, persists in conduct contrary to the requirements and limitations described in this subsection and subsection (h) of this section.

(j) The assistant presiding officer of the board shall assume the duties of the presiding officer in the event of the presiding officer's absence or incapacity.

(k) In the event of the absence or temporary incapacity of the presiding officer, and the assistant presiding officer, the members of the board may elect another member to act as the presiding officer of a board meeting, or may elect an interim acting presiding officer for the duration of the absences or incapacity or until another presiding officer is appointed by the governor.

(l) Upon the death, resignation, removal or permanent incapacity of the presiding officer or the assistant presiding officer, the board shall elect an assistant presiding officer from its membership to fill the vacant position. The board may elect an interim acting presiding officer until another presiding officer is appointed by the governor. Such an election shall be conducted as soon as practicable at a regular or special meeting of the board.

(m) Committee minutes shall be approved by the full board with a quorum of the committee members present to vote on approval of the minutes.

§194.4. Guidelines for Early Involvement in Rulemaking Process.

(a) The Executive Director may designate certain individuals and groups that have an interest in matters under the board's jurisdiction as a stakeholder group and who submit an application on a required form to the board.

(b) Input shall be sought from the stakeholder group on draft board rules prior to submitting the rules to the Texas Medical Board for approval, as appropriate.

(c) A rule adopted under this chapter may not be challenged on the grounds that the advisory board did not comply with this section. If the advisory board was unable to solicit a significant amount of input from the public or affected persons early in the rulemaking process, the board shall state in writing the reasons why it was unable to do so.

§194.5. Applicability of Chapter; Exemptions.

(a) Except as specifically exempted by subsections (b) and (c) of this section, the provisions of the Act and this chapter apply to any person representing that he or she performs radiologic procedures.

(b) This chapter does not prohibit the performance of a radiologic procedure by the following:

(1) a person who is a practitioner and performs the procedure in the course and scope of the profession for which that person holds the license; or

(2) a person who performs a radiologic procedure involving a dental x-ray machine, including panarex or other equipment designed and manufactured only for use in dental radiography and under the instruction or direction of a dentist, if the person and the dentist are in compliance with rules adopted under §601.251 and §601.252 of the Act, by the Texas State Board of Dental Examiners.

(c) This chapter does not prohibit the performance of a radiologic procedure which has not been identified as dangerous or hazardous under §194.17 of this chapter (relating to Dangerous or Hazardous Procedures) by the following:

(1) a person who has successfully completed a training program for non-certified technicians (NCT), in accordance with §194.13 of this chapter (relating to Mandatory Training Programs for Non-Certified Technicians), §194.14 of this chapter (relating to Alternate Training for Podiatric Medical Assistants), and §194.15 of this chapter (relating to Bone Densitometry Training) and who performs the procedure under the instruction or direction of a practitioner if the person and the practitioner are in compliance with rules adopted under the Act, §§601.251 - 601.254, by the Texas Board of Chiropractic Examiners, Texas Medical Board, Texas Physician Assistants Board, Texas Board of Nursing or Texas State Board of Podiatric Medical Examiners;

(2) a person who has successfully completed a training program for NCTs, in accordance with §194.13 of this chapter and who performs the procedure in a hospital that participates in the federal Medicare program or is accredited by the Joint Commission;

(3) students of medicine, osteopathic medicine, podiatry or chiropractic when under instruction or direction of a practitioner and if the student and the practitioner are in compliance with paragraph (1) of this subsection;

(4) a person who performs only in-vitro clinical or laboratory testing procedures as described in the Texas Regulations for the Control of Radiation;

(5) a student enrolled in a radiologic technology program which meets the requirements of §194.12 of this chapter (relating to Standards for the Approval of Certificate Program Curricula and Instructors) or §194.13 of this chapter, who is performing radiologic procedures in an academic or clinical setting as part of the program; or

(6) a person who performs radiologic procedures for a period of not more than ten days, while enrolled in and as a part of continuing education activities which meet the minimum standards set out in §194.7 of this chapter (relating to Biennial Renewal of Certificate or Placement on the Board's General Registry for Non-Certified Technicians Generally) and who is licensed or otherwise registered as a medical radiologic technologist in or by another state, District of Columbia, a territory of the United States, ARRT, NMTCB, the Board of Registry of the American Society of Clinical Pathologists, the Canadian Association of Medical Radiologic Technologists, the British Society of Radiographers, the Australian Institute of Radiography, or the Society of Radiographers of South Africa; or

(7) a person who performs the procedure in a hospital, federally qualified health center (FQHC), or for a practitioner, if a hardship exemption was granted to the hospital, FQHC or practitioner by the department during the previous 12-month period under §194.16 of this chapter (relating to Hardship Exemptions).

§194.6. Procedural Rules and Minimum Eligibility Requirements for Applicants for a Certificate or Placement on the Board's Non-Certified Technician General Registry.

(a) Except as otherwise provided in this chapter, an individual must be certified or hold a temporary certificate as a medical radiologic technologist or limited radiologic technologist, or be placed by the board on the general registry for non-certified technicians before the individual may perform a radiologic procedure.

(b) Types of Certificates. The board shall issue general certificates, limited certificates, temporary certificates (general or limited), or provisional certificates.

(c) General Requirements. Except as otherwise required in this section, an applicant for temporary or regular certification as a MRT or LMRT, or registration as a NCT must:

(1) graduate from high school or its equivalent as determined by the Texas Education Agency;

(2) attain at least 18 years of age;

(3) submit an application on a form prescribed by the board;

(4) pay the required application fee, as set forth under Chapter 175 of this title (relating to Fees and Penalties);

(5) provide a complete and legible set of fingerprints, on a form prescribed by the board, to the board or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation;

(6) certify that the applicant is mentally and physically able to perform radiologic procedures;

(7) not have a license, certification, or registration in this state or from any other licensing authority or certifying professional organization that is currently revoked, suspended, or subject to probation or other disciplinary action;

(8) not have proceedings that have been instituted against the applicant for the restriction, cancellation, suspension, or revocation of certificate, license, or authority to perform radiologic procedures in the state, a Canadian province, or the uniformed service of the United States in which it was issued; unless the board takes that fact into consideration in determining whether to issue the certificate;

(9) not have pending any prosecution against applicant in any state, federal, or international court for any offense that under the laws of this state is a felony or a misdemeanor that involves a crime of moral turpitude;

(10) be of good professional character as defined under §194.2 of this chapter (relating to Definitions);

(11) submit to the board any other information the board considers necessary to evaluate the applicant's qualifications; and

(12) meet any other requirement established by rules adopted by the board.

(d) Additional Requirements for Specific Certificate Types or Placement on the Board's Non-Certified Technician General Registry.

(1) General medical radiologic technologist certificate. In addition to meeting requirements under subsection (c) of this section, to qualify for a general certificate, an applicant must meet at least one of the following requirements:

(A) possession of current national certification as a registered technologist, radiographer, radiation therapist, or nuclear medicine technologist by ARRT;

(B) successful completion of the ARRT's examination in radiography, radiation therapy, or nuclear medicine technology;

(C) possession of current national certification as a nuclear medicine technologist by the NMTCB;

(D) successful completion of the NMTCB's examination in nuclear medicine technology; or

(E) current licensure, certification, or registration as a medical radiologic technologist in another state, the District of Columbia, or a territory of the United States whose requirements are more stringent than or are substantially equivalent to the requirements for Texas general certification.

(2) Limited medical radiologic technologist certificate. In addition to meeting requirements under subsection (c) of this section, to qualify for a limited certificate, an applicant must meet at least one of the following requirements:

(A) the successful completion of a limited course of study as set out in §194.12 of this chapter (relating to Standards for the Approval of Certificate Program Curricula and Instructors) and the successful completion of the appropriate limited examination in accordance with subsection (e) of this section;

(B) current licensure, certification, or registration as an LMRT in another state, the District of Columbia, or a territory of the United States of America whose requirements are more stringent than or substantially equivalent to the requirements for Texas limited certification; or

(C) current general certification as an MRT issued by the board. The MRT must surrender the general certificate and submit a written request for a limited certificate indicating the limited categories requested.

(3) Temporary general medical radiologic technologist. In addition to meeting requirements under subsection (c) of this section, to qualify for a temporary general certificate, an applicant must meet at least one of the following requirements:

(A) successful completion of a course of study in radiography, radiation therapy, or nuclear medicine technology which is accredited by an agency which is recognized by:

(i) the Council for Higher Education Accreditation, including but not limited to: the Joint Committee on Education in Nuclear Medicine Technology (JRCNMT); or

(ii) the United States Secretary of Education, including, but not limited to: the Joint Review Committee on Education in Radiologic Technology (JRCERT), Accrediting Bureau of Health Education Schools, or the Southern Association of Colleges and Schools, Commission on Colleges;

(B) be approved by the ARRT as examination eligible;

(C) be approved by the NMTCB as examination eligible;

(D) be currently licensed or otherwise registered as an MRT in another state, the District of Columbia, or a territory of the United States whose requirements are more stringent than or substantially equivalent to the Texas requirements for certification at the time of application to the board; or

(E) have completed education, training and clinical experience which is substantially equivalent to that of an accredited educational program in radiography as listed in subparagraph (A) of this paragraph.

(4) Temporary limited medical radiologic technologist. In addition to meeting requirements under subsection (c) of this section, to qualify for a temporary limited certificate, an applicant must meet at least one of the following requirements:

(A) successful completion of a limited certificate program in the categories of skull, chest, spine, abdomen or extremities, which is approved in accordance with §194.12 of this chapter;

(B) current enrollment in a general certificate program approved in accordance with §194.12 of this chapter and the issuance of a certificate of completion by the program signifying completion of classroom instruction, clinical instruction, evaluations and competency testing in all areas included in the limited curriculum; or

(C) be currently licensed or otherwise registered as an LMRT in another state, the District of Columbia, or a territory of the United States whose requirements are more stringent than or substantially equivalent to the Texas requirements for certification at the time of application to the board.

(5) Provisional medical radiologic technologist.

(A) To qualify for a provisional general certificate, an applicant must:

(i) be currently licensed or certified in another jurisdiction,

(ii) have been licensed or certified in good standing as a MRT for at least two years in another jurisdiction, including a foreign country, that has licensing or certification requirements substantially equivalent to the requirements of the Act;

(iii) pass a national or other examination recognized by the board relating to the practice of radiologic technology;

(iv) provide a complete and legible set of fingerprints, on a form prescribed by the board, to the board or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation; and

(v) be sponsored by a medical radiologic technologist certified by the board under the Act with whom the provisional certificate holder will practice during the time the person holds a provisional certificate.

(B) A provisional certificate is valid until the date the board approves or denies the provisional certificate holder's application for a certificate.

(C) The board must approve or deny a provisional certificate holder's application for a certificate not later than the 180th day after the date the provisional certificate is issued. The board may extend the 180-day period if the results of an examination have not been received by the board before the end of that period.

(6) Placement on the Non-Certified Technician General Registry.

(A) Registration Required. In accordance with §601.202 of the Act, a person who intentionally uses radiologic technology, other than a certificate holder, person performing procedures under the supervision of a dentist, physician assistant, or registered nurse, must register with the board prior to performing any procedures.

(B) In addition to meeting the requirements under subsection (c) of this section, to qualify for placement on the board's NCT General Registry, an applicant must successfully complete a training program approved by the board in accordance with §194.13 of this chapter (relating to Mandatory Training Programs for Non-Certified Technicians) or §194.15 of this chapter (relating to Bone Densitometry Training).

(e) Examinations Required for Certification.

(1) Jurisprudence examination. An applicant for a certificate must pass the jurisprudence examination ("JP exam"), which shall be conducted on the certification requirements and other laws, rules, or regulations applicable to the medical radiologic technologist profession in this state. The JP exam shall be developed and administered as follows:

(A) The staff of the Medical Board shall prepare questions for the JP exam and provide a facility by which applicants can take the examination.

(B) An examinee shall not be permitted to bring books, compends, notes, journals, calculators or other documents or devices into the examination room, nor be allowed to communicate by word or sign with another examinee while the examination is in progress without permission of the presiding examiner, nor be allowed to leave the examination room except when so permitted by the presiding examiner.

(C) Irregularities during an examination such as giving or obtaining unauthorized information or aid as evidenced by observation or subsequent statistical analysis of answer sheets, shall be sufficient cause to terminate an applicant's participation in an examination, invalidate the applicant's examination results, or take other appropriate action.

(D) Applicants must pass the JP exam with a score of 75 or better within three attempts.

(E) An applicant who is unable to pass the JP exam within three attempts must appear before a committee of the board to address the applicant's inability to pass the examination and to re-evaluate the applicant's eligibility for certification. It is at the discretion of the committee to allow an applicant additional attempts to take the JP exam.

(F) A person who has passed the JP exam shall not be required to retake the exam for re-licensure, except as a specific requirement of the board as part of an agreed order.

(2) Examinations accepted for certification.

(A) Examination eligibility.

(i) Persons who qualify under subsection (d)(1) of this section are not required to be reexamined for state certification.

(ii) Holders of a temporary general certificate or temporary limited certificate may take the appropriate examination provided the person complies with the requirements of the Act and this chapter.

(B) General certificate. The following examinations are accepted for a general certificate application:

(i) NMTCB examination in nuclear medicine technology; or

(ii) The appropriate ARRT examination in radiography, nuclear medicine technology, or radiation therapy. Determination of the appropriate examination shall be made on the basis of the type of educational program completed by the applicant for a general certificate.

(C) Limited certificate.

(i) The following examinations are accepted for a limited certificate application: Successful completion of the appropriate examination, including the core knowledge component, as follows:

(I) skull--the ARRT examination for the limited scope of practice in radiography (skull);

(II) chest--the ARRT examination for the limited scope of practice in radiography (chest);

(III) spine--the ARRT examination for the limited scope of practice in radiography (spine);

(IV) extremities--the ARRT examination for the limited scope of practice in radiography (extremities);

(V) chiropractic--the ARRT examinations for the limited scope of practice in radiography (spine and extremities);

(VI) podiatric--the ARRT examination for the limited scope of practice in radiography (podiatry); or

(VII) cardiovascular--the Cardiovascular Credentialing International invasive registry examination.

(ii) Applicants approved for the limited certification examination will be allowed three attempts to pass the examination, within one year from the issuance of the applicants' temporary limited certificate. Individuals who fail to pass within the required number of attempts or one-year-period will no longer be eligible for additional attempts, except as provided in clause (iii) of this subparagraph.

(iii) Notwithstanding clause (ii) of this subparagraph, an applicant who fails to pass the examination within the required number of attempts or within the one-year-period may obtain approval for one additional attempt, if the individual successfully completes a review course of no less than 60 hours of continuing education in length, offered by an approved program under §194.12 of this chapter. The additional attempt must be made no later than one year from the date of the board's approval granted. Those failing to attempt or pass the examination within the additional one-year period allowed shall no longer be eligible for additional attempts at passage, and shall only be eligible for state examination attempts for the purpose of state limited certification by again successfully completing an approved program under §194.12 of this chapter.

(3) Examination schedules. A schedule of examinations indicating the date(s), location(s), fee(s) and application procedures shall be provided by the board or organization administering the examination(s).

(4) Standards of acceptable performance. The scaled score to determine pass or fail performance shall be 75. For the cardiovascular limited certificate, the Cardiovascular Credentialing International examinations (Cardiovascular Science Examination and/or the Invasive Registry Examination as required to obtain the Registered Cardiovascular Invasive Specialist RCIS credential) the scaled score to determine pass or fail performance shall be 70.

(5) Completion of examination application forms. Each applicant shall be responsible for completing and transmitting appropriate examination application forms and paying appropriate examination fees by the deadlines set by the board or organization administering the examinations prescribed by the board.

(6) Examination Results.

(A) Notification to examinees. Results of an examination prescribed by the board but administered under the auspices of another organization will be communicated to the applicant by the board, unless the contract between the board and that organization provides otherwise.

(B) Score release. The applicant is responsible for submitting a signed score release to the examining agency or organization or otherwise arranging to have examination scores forwarded to the board.

(C) Deadlines. The board shall notify each examinee of the examination results within 14 days of the date the board receives the results. If notice of the examination results will be delayed for longer than 90 days after the examination date, the board shall notify the person of the reason for the delay before the 90th day. The board may require a testing service to notify a person of the results of the person's examination.

(7) Refunds. Examination fee refunds will be in accordance with policies and procedures of the board or the organization prescribed by the board to administer an examination. No refunds will be made to examination candidates who fail to appear for an examination.

(f) Documentation. The following documentation shall be submitted as a part of the certification application process:

(1) Name Change. Any applicant who submits documentation showing a name other than the name under which the applicant has applied must present certified copies of marriage licenses, divorce decrees, or court orders stating the name change. In cases where the applicant's name has been changed by naturalization the applicant should send the original naturalization certificate by certified mail to the board for inspection.

(2) ARRT or NMTCB-Certified or Considered Exam Eligible. For applicants certified by ARRT or NMTCB or considered examination eligible by such organizations, the applicant must provide a letter of verification of current certification or examination eligibility sent directly from ARRT or NMTCB, as applicable.

(3) Training Program Certification. For applicants who are graduates of a program accepted by the board for certification under §194.12 of this chapter, §194.13 of this chapter, or §194.14 of this chapter, each applicant must have a certificate of successful completion of an educational program submitted directly from a program accepted by the board for certification, on a form provided by the board.

(4) Examination Scores. Each applicant for certification must have a certified transcript of grades submitted directly from the appropriate testing service to the board for all examinations accepted by the board for certification.

(5) Verification from other states. On request of board staff, an applicant must have any state, in which he or she has ever been registered, certified, or licensed as any type of healthcare provider regardless of the current status of the registration, certification, or license, submit to the board a letter verifying the status of the registration, certification, or license and a description of any sanctions or pending disciplinary matters. The information must be sent directly to the board from the state licensing entities.

(6) Arrest Records. If an applicant has ever been arrested, a copy of the arrest and arrest disposition must be requested by the applicant to arresting authority, and that authority must submit copies directly to the board.

(7) Malpractice. If an applicant has ever been named in a malpractice claim filed with any liability carrier or if an applicant has ever been named in a malpractice suit, the applicant must:

(A) have each liability carrier complete a form furnished by this board regarding each claim filed against the applicant's insurance, as applicable;

(B) for each claim that becomes a malpractice suit, have the attorney representing the applicant in each suit submit a letter directly to the board explaining the allegation, dates of the allegation, and current status of the suit. If the suit has been closed, the attorney must state the disposition of the suit, and if any money was paid, the amount of the settlement. The letter shall be accompanied by supporting documentation including court records if applicable. If such letter is not

available, the applicant will be required to furnish a notarized affidavit explaining why this letter cannot be provided; and

(C) compose and provide a statement explaining the circumstances pertaining to patient care in defense of the allegations.

(8) Additional Documentation. An applicant must submit additional documentation as is deemed necessary to facilitate the investigation of any application for certification.

(g) Review and Recommendations by the Executive Director.

(1) The executive director or designee shall review applications for certification or other authorization and may determine whether an applicant is eligible for certification or other authorization, or refer an application to a committee of the board for review.

(2) If the executive director or designee determines that the applicant clearly meets all requirements, the executive director or designee, may issue a certificate or other authorization to the applicant, to be effective on the date issued without formal board approval, as authorized by §601.052 of the Act.

(3) If the executive director determines that the applicant does not clearly meet all certification or other authorization requirements as prescribed by the Act and this chapter, a certificate or other authorization may be issued only upon action by the board following a recommendation by the Licensure Committee, in accordance with §§601.052 of the Act and §187.13 of this title (relating to Informal Board Proceedings Relating to Licensure Eligibility). Not later than the 20th day after the date the applicant receives notice of the executive director's determination the applicant shall:

(A) request a review of the executive director's recommendation by a committee of the board conducted in accordance with §187.13 of this title; or

(B) withdraw his or her application.

(C) If an applicant fails to take timely action, as provided under this subsection, such inaction shall be deemed a withdrawal of his or her application.

(4) To promote the expeditious resolution of any matter concerning an application for certification or other authorization, the executive director, with the approval of the board, may recommend that an applicant be eligible for a certificate or other authorization under certain terms and conditions and present a proposed agreed order or remedial plan to the applicant. Not later than the 20th day after the date the applicant receives notice of the executive director's recommendation for an agreed order or remedial plan, the applicant shall do one of the following:

(A) sign the order or remedial plan and the order/remedial plan shall be presented to the board for consideration and acceptance without initiating a Disciplinary Licensure Investigation (as defined in §187.13 of this title) or appearing before a committee of the board concerning issues relating to licensure eligibility; or

(B) request a review of the executive director's recommendation by a committee of the board conducted in accordance with §187.13 of this title; or

(C) withdraw his or her application.

(D) If an applicant fails to take timely action, as provided under this subsection, such inaction shall be deemed a withdrawal of his or her application.

(h) Committee Referrals. An applicant who has either requested to appear before the licensure committee of the board or has elected to be referred to the licensure committee of the board due to a determination of ineligibility by the executive director in accordance with section, in lieu of withdrawing the application for certification, may be subject to a Disciplinary Licensure Investigation as defined in §187.13 of this title. Review of the executive director's determination by a committee of the board shall be conducted in accordance with §187.13 of this title. All reports received or gathered by the board on each applicant are confidential and are not subject to disclosure under the Public Information Act. The board may disclose such reports to appropriate licensing authorities in other states.

(i) All applicants must provide sufficient documentation to the board that the applicant has, on a full-time basis, actively practiced, been a student at an acceptable approved program under §194.12 of this chapter, §194.13 of this chapter or §194.14 of this chapter or been on the active teaching faculty of an acceptable approved program under §194.12 of this chapter, within one of the last two years preceding receipt of an application for certification. The term "full-time basis," for purposes of this section, shall mean at least 20 hours per week for 40 weeks duration during a given year.

(j) Applicants who are unable to demonstrate active practice on a full time basis may, in the discretion of the board, be eligible for an unrestricted certificate or a restricted certificate subject to one or more of the following conditions or restrictions as set forth in paragraphs (1) - (5) of this subsection:

(1) completion of specified continuing education hours directly or indirectly related to the disciplines of radiologic technology and offered by an institution accredited by a regional accrediting organization such as the Southern Association of Colleges and Schools (SACS), or by agencies or organizations such as JRCERT, JRCNMT, Joint Review Committee on Education in Cardiovascular Technology (JTCCVT), the Council on Chiropractic Education (CCE), ABHES, or the American Society of Radiologic Technologists (ASRT);

(2) current certification by ARRT or NMTCB;

(3) limitation and/or exclusion of the practice of the applicant to specified activities of the practice;

(4) remedial education; and

(5) such other remedial or restrictive conditions or requirements which, in the discretion of the board are necessary to ensure protection of the public and minimal competency of the applicant to safely practice.

(k) Applicants for certification, registration, or other authorization:

(1) whose applications have been filed with the board in excess of one year will be considered expired. Any fee previously submitted with that application shall be forfeited unless otherwise provided by §175.5 of this title (relating to Payment of Fees or Penalties). Any further request for certification will require submission of a new application and inclusion of the current certification fee. An extension to an application may be granted under certain circumstances, including:

(A) Delay by board staff in processing an application;

(B) Application requires Licensure Committee review after completion of all other processing and will expire prior to the next scheduled meeting;

(C) Licensure Committee requires an applicant to meet specific additional requirements for certification and the application will expire prior to deadline established by the Committee;

(D) Applicant requires a reasonable, limited additional period of time to obtain documentation after completing all other re-

quirements and demonstrating diligence in attempting to provide the required documentation;

(E) Applicant is delayed due to unanticipated military assignments, medical reasons, or catastrophic events;

(2) who in any way falsify the application may be required to appear before the board;

(3) on whom adverse information is received by the board may be required to appear before the board;

(4) shall be required to comply with the board's rules and regulations which are in effect at the time the completed application form and fee are filed with the board;

(5) may be required to sit for additional oral or written examinations that, in the opinion of the board, are necessary to determine competency of the applicant;

(6) must have the application complete in every detail at least 20 days prior to the board meeting in which they are considered for certification. Applicants may qualify for a temporary certificate prior to being considered by the board for certification, contingent upon meeting the minimum requirements for a temporary certificate under this section;

(7) who previously held a Texas health care provider license, certificate, permit, or registration may be required to complete additional forms as required.

(l) Alternative Procedures for Military Service Members, Military Veterans, and Military Spouses.

(1) An applicant who is a military service member, military veteran, or military spouse may be eligible for alternative demonstrations of competency for certain requirements related to an application for certification or placement on the board's NCT General Registry. Unless specifically allowed in this subsection, an applicant must meet the requirements for certification as a medical radiologic technologist, limited medical radiologic technologist, or placement on the board's Non-Certified Technician General Registry as specified in this chapter.

(2) To be eligible, an applicant must be a military service member, military veteran, or military spouse and meet one of the following requirements:

(A) hold an active unrestricted certificate, license, or registration as a medical radiologic technologist, limited medical radiologic technologist, or non-certified technician in another state, the District of Columbia, or a territory of the United States that has requirements that are substantially equivalent to the requirements for a Texas certificate; or

(B) within the five years preceding the application date held a certificate to practice radiologic technology in this state.

(3) The executive director may waive any prerequisite to obtaining a certificate or other authorization for an applicant described in paragraph (1) of this subsection after reviewing the applicant's credentials.

(4) Applications for certification or other authorization from applicants qualifying under paragraphs (1) and (2) of this subsection shall be expedited by the board's licensure division. Such applicants shall be notified, in writing or by electronic means, as soon as practicable, of the requirements and process for renewal of the certificate.

(5) Alternative Demonstrations of Competency Allowed. Applicants qualifying under this subsection:

(A) in demonstrating compliance with subsection (h) of this section must only provide sufficient documentation to the board that the applicant has, on a full-time basis, actively practiced, been a student at an approved program, or has been on the active teaching faculty of an approved program, within one of the last two years preceding receipt of an application for certification;

(B) notwithstanding the one year expiration in subsection (i)(1) of this section, are allowed an additional six months to complete the application prior to it becoming inactive; and

(C) notwithstanding the 20 day deadline in subsection (i)(6) of this section, may be considered for certification up to five days prior to the board meeting.

(m) Applicants with Military Experience.

(1) The board shall, with respect to an applicant who is a military service member or military veteran as defined in §194.2 of this chapter, credit verified military service, training, or education toward the requirements, other than an examination requirement, for a certificate or other authorization issued by the board.

(2) This section does not apply to an applicant who:

(A) has had a license, certificate, or registration to practice radiologic technology suspended or revoked by this state, another state, a Canadian province, or another country;

(B) holds a license, certificate, or registration to practice radiologic technology issued by another state , Canadian province, or another country that is subject to a restriction, disciplinary order, or probationary order; or

(C) has an unacceptable criminal history.

(n) Re-Application for Certification or other Authorization Prohibited. A person who has been determined ineligible for a certificate by the Licensure Committee may not reapply for a certificate prior to the expiration of one year from the date of the board's ratification of the Licensure Committee's determination of ineligibility and denial of certification.

(o) Request for Criminal History Evaluation Letter.

(1) In accordance with Texas Occupations Code, §53.102, prior to applying for certification or other authorization, an individual may request that board staff review the person's criminal history to determine if the person is potentially ineligible for certification or other authorization based solely on the person's criminal background.

(2) Requestors must submit their requests in writing along with appropriate fees as provided in §175.1 of this title (relating to Application and Administrative Fees).

(3) The board may require additional documentation including fingerprint cards before issuing a criminal history evaluation letter.

(4) The board shall provide criminal history evaluation letters that include the basis for potential ineligibility, if grounds for ineligibility exist to all requestors no later than the 90th day after the board receives all required documentation to allow the board to respond to a request.

(5) If a requestor does not provide all requested documentation within one year of submitting the original request, the request will be considered as withdrawn.

(6) All evaluations letters shall be based on existing law at the time of the request. All requestors remain subject to the requirements for licensure at the time of application and may be determined

ineligible under existing law at the time of application. If a requestor fails to provide complete and accurate information to the board, the board may invalidate the criminal history evaluation letter.

(7) An individual shall be permitted to apply for licensure, regardless of the board's determination in a criminal history evaluation letter.

§194.7. Biennial Renewal of Certificate or Placement on the Board's General Registry for Non-Certified Technicians Generally.

(a) Temporary Certificates.

(1) A temporary certificate shall expire one year from the date of issue. A person whose temporary certificate has expired is not eligible to reapply for another temporary certificate.

(2) A temporary certificate is not subject to a renewal or extension for any reason.

(3) Persons who hold temporary certificates, either general or limited, are not subject to continuing education requirements set forth under subsection (c) of this section.

(b) General and Limited Certificates; Placement on the Board's General Registry for Non-Certified Technicians.

(1) MRTs and LMRTs certified and NCTs registered under the Act shall register biennially and pay a fee. A holder of a certificate or NCT general registration permit may, on notification from the board, renew an unexpired certificate or permit by submitting the required form and documents and by paying the required renewal fee to the board on or before the expiration date of the permit.

(2) The fee shall accompany the required form which legibly sets forth the certificate or permit holder's name, mailing address, business address, and other necessary information prescribed by the board. The certificate or permit holder must include with the required forms and fee documentation of continuing education completed during the previous two years to the date of renewal ("biennial renewal period").

(c) Continuing education requirements.

(1) Generally.

(A) MRT. As a prerequisite to the biennial registration of a certificate, a minimum of 24 hours of continuing education hours must be completed during each biennial renewal period. The continuing education must be completed in the following categories:

(i) At least 12 hours of the required number of hours must be satisfied by attendance and participation in formal, instructor-led courses that are designated for Category A or A+ credits of continuing education evaluated by an organization recognized by ARRT as a Recognized Continuing Education Evaluation Mechanism (RCEEM) or RCEEM+ during the biennial renewal period.

(ii) The remaining 12 credits for the biennial renewal period may be composed of self-study or courses not approved for formal CE, and shall be recorded in a manner that can be easily transmitted to the board upon request.

(iii) Any additional hours completed through self-study must be verifiable, through activities that include reading materials, audio materials, audiovisual materials, or a combination thereof.

(B) LMRT. As a prerequisite to the biennial registration of a limited certificate, a minimum of 18 hours of continuing education acceptable to the board must be completed during each biennial renewal period. The hours completed must be in the topics of general radiation health and safety or related to the categories of limited certificate held. The continuing education must be completed in the following categories:

(i) At least nine hours of the required number of hours must be satisfied by attendance and participation in formal, instructor-led courses that are designated for Category A or A+ credits of continuing education evaluated by an organization recognized by ARRT as a Recognized Continuing Education Evaluation Mechanism (RCEEM) or RCEEM+ during the biennial renewal period.

(ii) The remaining nine credits for the biennial renewal period may be composed of self-study or courses not approved for formal CE, and shall be recorded in a manner that can be easily transmitted to the board upon request.

(iii) Any additional hours completed through self-study must be verifiable, through activities that include reading materials, audio materials, audiovisual materials, or a combination thereof.

(C) An MRT or LMRT who also holds a current Texas license, registration, or certification in another health profession may satisfy the continuing education requirement for renewal of a certificate with hours counted toward renewal of the other license, registration, or certification, provided such hours meet all the requirements of this subsection.

(D) An MRT or LMRT who holds a current and active annual registration or credential card issued by ARRT indicating that the certificate holder is in good standing and not on probation satisfies the continuing education requirement for renewal of a general or limited certificate, provided the hours accepted by ARRT were completed during the certificate holder's biennial renewal period and meet or exceed the hour the requirements set out in this subsection. The board must be able to verify the status of the card presented by the certificate holder electronically or by other means acceptable to the board. The board may review documentation of the continuing education activities in accordance with paragraph (5) of this subsection.

(E) NCTs. As a prerequisite to the biennial registration of a general registration permit, the individual must complete a minimum of 12 hours of continuing education during each biennial renewal period. The continuing education must be completed in the following categories:

(i) At least six hours of the required number of hours must be satisfied by attendance and participation in formal, instructor-led courses that are designated for Category A or A+ credits of continuing education evaluated by an organization recognized by ARRT as a Recognized Continuing Education Evaluation Mechanism (RCEEM) or RCEEM+ during the biennial renewal period.

(ii) The remaining six credits for the biennial renewal period may be composed of self-study or courses not approved for formal CE, and shall be recorded in a manner that can be easily transmitted to the board upon request.

(iii) Any additional hours completed through independent self-study must be verifiable, through activities that include reading materials, audio materials, audiovisual materials, or a combination thereof.

(2) Content Requirements.

(A) At least 50% of the required number of hours must be activities which are directly related to the use and application of ionizing forms of radiation to produce diagnostic images and/or administer treatment to human beings for medical purposes. For the purpose of this section, directly related topics include, but are not limited to: radiation safety, radiation biology and radiation physics; anatomical positioning; radiographic exposure technique; radiological exposure

technique; emerging imaging modality study; patient care associated with a radiologic procedure; radio pharmaceutics, pharmaceutics, and contrast media application; computer function and application in radiology; mammography applications; nuclear medicine application; and radiation therapy applications.

(B) No more than 50% of the required number of hours may be satisfied by completing or participating in learning activities which are related to the use and application of non-ionizing forms of radiation for medical purposes.

(C) No more than 50% of the required number of hours may be satisfied by completing or participating in learning activities which are indirectly related to radiologic technology. For the purpose of the section, indirectly related topics include, but are not limited to, patient care, computer science, computer literacy, introduction to computers or computer software, physics, human behavioral sciences, mathematics, communication skills, public speaking, technical writing, management, administration, accounting, ethics, adult education, medical sciences, and health sciences. Other courses may be accepted for credit provided there is a demonstrated benefit to patient care.

(3) Alternative Continuing Education Accepted by the Board. The additional activities for which continuing education credit will be awarded are as follows:

(A) successful completion of an entry-level or advanced-level examination previously passed in the same discipline of radiologic technology administered by or for the ARRT during the renewal period. The examinations shall be topics dealing with ionizing forms of radiation administered to human beings for medical purposes. Such successful completion shall be limited to not more than one-half of the continuing education hours required;

(B) successful completion or recertification in a cardiopulmonary resuscitation course, basic cardiac life support course, or advanced cardiac life support course during the continuing education period. Such successful completion or recertification shall be limited to not more than:

(i) three hours credit during a renewal period for a cardiopulmonary resuscitation course or basic cardiac life support course; or

(ii) 6 hours credit during a renewal period for an advanced cardiac life support course;

(C) attendance and participation in tumor conferences (limited to six hours), in-service education and training offered or sponsored by Joint Commission-accredited or Medicare certified hospitals, provided the education/training is properly documented and is related to the profession of radiologic technology;

(D) teaching in a program accredited by a regional accrediting organization such as the Southern Association of Colleges and Schools; or an institution accredited by JRCERT, JRCNMT, JTCCVT, CCE, ABHES, ASRT, professional organizations or associations, or a federal, state, or local governmental entity, with a limit of one contact hour of credit for each hour of instruction per topic item once during the continuing education reporting period for up to a total of 6 hours. No credit shall be given for teaching that is required as part of one's employment. Credit may be granted in direct, indirect or non-ionizing radiation based on the topic; or

(E) developing and publishing a manuscript of at least 1,000 words in length related to radiologic technology with a limit of six contact hours of credit during a continuing education period. Upon audit by the board, the certificate holder must submit a letter from the publisher indicating acceptance of the manuscript for publication or a copy of the published work. The date of publication will determine the continuing education period for which credit will be granted. Credit may be granted in direct, indirect or non-ionizing radiation based on the topic.

(4) Reporting Requirements. A certificate holder or NCT must report on the biennial registration form if she or he has completed the required continuing education during the previous renewal period.

(A) A certificate holder may carry forward continuing education credit hours that meet the requirements under this subsection and earned prior to the biennial registration renewal period which are in excess of the biennial hour requirement, and apply such hours to the subsequent renewal period requirements.

(i) For MRTs, a maximum of 48 total excess credit hours meeting the requirements under this subsection may be carried forward.

(ii) For LMRTs, a maximum of 24 hours meeting the requirements of this subsection may be carried forward. Excess continuing education credits may not be carried forward or applied to a report of continuing education more than two years beyond the date of the registration following the period during which the credits were earned.

(B) A NCT may carry forward continuing education credit hours that meet the requirements under this subsection and earned prior to the biennial registration renewal period which are in excess of the biennial hour requirement, and apply such hours to the subsequent renewal period requirements. A maximum of 12 total excess credit hours meeting the requirements under paragraph (3)(A) of this subsection may be carried forward. Excess continuing education credits may not be carried forward or applied to a report of continuing education more than two years beyond the date of the registration following the period during which the credits were earned.

(5) Exemptions.

(A) A certificate holder may request in writing an exemption for the following reasons, subject to the approval of the certification committee of the board:

(i) catastrophic illness;

(ii) military service of longer than one year's duration outside the United States;

(iii) residence of longer than one year's duration outside the United States; or

(iv) good cause shown on written application of the certificate holder that gives satisfactory evidence to the board that the certificate holder is unable to comply with the requirement for continuing medical education.

(B) An exception under paragraph (6) of this subsection may not exceed one registration period, but may be renewed biennially, subject to the approval of the board.

(6) A certificate holder or NCT who is a military service member may request an extension of time, not to exceed two years, to complete any continuing education requirements.

(7) This subsection does not prevent the board from taking disciplinary action with respect to a certificate holder or an applicant for a certificate by requiring additional hours of continuing education or of specific course subjects.

(8) The board may require written verification of continuing education credits from any certificate holder within 30 days of

request. Failure to provide such verification may result in disciplinary action by the board.

(9) Unless exempted under the terms of this subsection, a certificate holder or NCT's failure to obtain and timely report required hours of continuing education as required and provided for in this subsection shall result in the nonrenewal of the certificate until such time as the certificate holder obtains and reports the required continuing education hours; however, the executive director of the Medical board may issue to such a certificate holder a temporary certificate numbered so as to correspond to the nonrenewed certificate. Such a temporary certificate shall be issued at the direction of the executive director for a period of no longer than 90 days. A temporary certificate issued pursuant to this subsection may be issued to allow the certificate holder who has not obtained or timely reported the required number of hours an opportunity to correct any deficiency so as not to require termination of practice.

(10) Determination of contact hour credits. A contact hour shall be defined as 50 minutes of attendance and participation. One-half contact hour shall be defined as 30 minutes of attendance and participation during a 30-minute period.

(d) Criminal History Requirement for Registration Renewal.

(1) An applicant must submit a complete and legible set of fingerprints for purposes of performing a criminal history check of the applicant.

(2) The board may not renew the certificate or NCT general registration permit of a person who does not comply with the requirement of paragraph (1) of this subsection.

(3) A holder of a certificate or NCT general registration permit is not required to submit fingerprints under this section for the renewal of the certificate or permit if the holder has previously submitted fingerprints for the initial issuance of the certificate NCT general registration permit or as part of a prior renewal of a certificate or NCT general registration permit.

(e) Report of Impairment on Registration Form.

(1) A holder of a certificate or NCT general registration permit who reports an impairment that affects his or her ability to actively practice as a MRT, LMRT, or NCT shall be given written notice of the following:

(A) based on the individual's impairment, he or she may request:

(i) to be placed on retired status pursuant to §194.10 of this chapter (relating to Retired Certificate or NCT General Registration Permit);

(ii) to voluntarily surrender the certificate or NCT registration permit pursuant to §194.33 of this chapter (relating to Voluntary Relinquishment or Surrender of Certificate or Permit); or

(iii) to be referred to the Texas Physician Health Program pursuant to Chapter 180 of this title (relating to Texas Physician Health Program and Rehabilitation Orders); and

(B) that failure to respond to the written notice or otherwise not comply with paragraph (1) of this subsection within 45 days shall result in a referral to the board's investigation division for possible disciplinary action.

(2) The board shall provide written notice as described in paragraph (1) of subsection within 30 days of receipt of the certificate holder's registration form indicating the certificate holder's impairment.

(f) The board shall deny an application for renewal of a certificate upon notice of the certificate or NCT general registration permit holder's default of child support payments, as provided under Chapter 232 of the Texas Family Code, or default of a Texas Guaranteed Student Loan Corporation guaranteed student loan, as provided in the Texas Education Code, §57.491.

(g) The board shall deny an application for renewal of a certificate or NCT general registration permit or take and/or impose other disciplinary action against such an individual who falsifies an affidavit or otherwise submits false information to obtain renewal of a certificate, pursuant to the Act, §601.302.

(h) If the renewal fee and completed application form are not received on or before the expiration date of the certificate, the fees set forth in Chapter 175 of this title (relating to Fees and Penalties) shall apply.

(i) Except as otherwise provided, the board shall not waive fees or penalties.

(j) The board shall stagger biennial registration of certificate or NCT general registration permit holders proportionally on a periodic basis.

(k) A certificate or NCT general registration permit holder who engages in activities requiring a certificate or other authorization while in Texas, without an biennial registration permit for the current renewal period as provided for in the board rules has the same force and effect as and is subject to all penalties of practicing without a certificate or other required authorization.

(l) Expired Biennial Registration.

(1) Generally.

(A) If a certificate or NCT general registration permit holder's registration has been expired for less than one year, the certificate or permit holder may obtain a new registration by submitting to the board a completed registration application, and the registration and penalty fees, as set forth under Chapter 175 (relating to Fees and Penalties).

(B) If a certificate holder or NCT general registration permit holder's registration has been expired for one year or longer, the certificate or permit holder's certificate or permit will be automatically canceled, unless an investigation is pending, and the certificate or permit holder may not obtain a new registration.

(C) A person whose certificate or NCT general registration permit has expired may not engage in activities that require a certificate or permit until the certificate or permit has been renewed. Performing activities requiring a certificate or permit during the period in which registration has expired without obtaining a new registration for the current registration period has the same effect as, and is subject to all penalties of, practicing radiologic technology in violation of the Act.

(D) If a certificate or NCT general registration permit has been expired for one year or longer, it is considered to have been canceled, unless an investigation is pending. A new certificate or NCT general registration permit may be obtained by complying with the requirements and procedures for obtaining an original certificate or permit.

(2) Renewal for technologists on active military duty with expired certificate or NCT general registration permit. A holder of a certificate or NCT general registration permit that has been expired for longer than a year may file a complete application for another certificate or permit of the same type as that which expired.

(A) The application shall be on official board forms and be filed with the application and initial certification or NCT general registration permit fee.

(B) An applicant shall be entitled to a certificate or NCT general registration permit of the same type as that which expired based upon the applicant's previously accepted qualification and no further qualifications or examination shall be required.

(C) The application must include a copy of the official orders or other official military documentation showing that the holder was on active duty during any portion of the period for which the applicant was last certified or registered as an NCT with the board.

(D) An applicant for a different type of certificate than that which expired must meet the requirements of this chapter generally applicable to that type of certificate.

§194.8. Renewal of Certificate by Out-of-State Person.

(a) A person who held a certificate in this state, moved to another state, and currently holds a certificate or license and has been in practice in the other state for the two years preceding the date of application may obtain a new certificate without reexamination.

(b) The person must pay to the board a fee that is equal to two times the normally required renewal fee for the certificate.

§194.9. Change of Name and Address.

(a) The certificate or NCT general registration holder shall notify the board of changes in name, preferred mailing address, or place(s) of business or employment within 30 calendar days of such change(s).

(b) Notification of address changes shall be made in a manner required by the board.

§194.10. Retired Certificate or NCT General Registration Permit.

(a) The registration fee shall not apply to retired certificate or NCT general registration permit holders.

(b) To become exempt from the registration fee due to retirement:

(1) the certificate or permit holder's current certificate or permit must not be under an investigation or order with the board or otherwise be restricted; and

(2) the certificate or permit holder must request in writing on a form prescribed by the board for his or her certificate or permit to be placed on official retired status.

(3) The following restrictions shall apply to certificate or permit holders whose certificates or permits are on official retired status:

(A) the certificate or permit holder must not engage in clinical activities requiring a certificate or permit in Texas or any state;

(B) the certificate or permit holder's certificate or permit may not be endorsed to any other state.

(c) A certificate or permit holder may return to active status by:

(1) applying to the board;

(2) paying an application fee equal to an application fee for a certificate or permit holder;

(3) complying with the requirements for certificate or permit renewal under the Act;

(4) providing current verifications from each state in which the certificate or permit holder holds a license, certificate, permit, or registration, as applicable;

(5) providing current verifications of certification by ARRT or NMTCB, as applicable;

(6) submitting professional evaluations from each employment held after the license was placed on inactive status; and

(7) complying with subsection (d) of this section.

(d) Licensure Committee or Executive Director Recommendations.

(1) The request of a certificate or permit holder seeking a return to active status whose certificate or permit has been placed on official retired status for two years or longer shall be submitted to the Licensure Committee of the board for consideration and a recommendation to the full board for approval or denial of the request. After consideration of the request and the recommendation of the Licensure Committee, the Licensure Committee shall make a recommendation to the full board for approval or denial. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request subject to such conditions which the board determines are necessary to adequately protect the public including, but not limited to the following terms:

(A) completion of specified continuing education hours directly or indirectly related to the disciplines of radiologic technology and offered by an institution accredited by a regional accrediting organization such as SACS, or by JRCERT, JRCNMT, JTCCVT, CCE, ABHES, or ASRT;

(B) current certification by ARRT or NMTCB, as applicable;

(C) limitation and/or exclusion of the practice of the applicant to specified activities of the practice;

(D) remedial education; and

(E) such other remedial or restrictive conditions or requirements which, in the discretion of the board are necessary to ensure protection of the public and minimal competency of the applicant to safely practice.

(2) The request of a certificate or permit holder seeking a return to active status whose certificate has been placed on official retired status for less than two years may be approved by the executive director of the Medical board or submitted by the executive director to the Licensure Committee of the board, for consideration and a recommendation to the full board for approval or denial of the request. In those instances in which the executive director submits the request to the Licensure Committee of the board, the Licensure Committee shall make a recommendation to the full board for approval or denial. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request subject to such conditions which the board determines are necessary to adequately protect the public including, but not limited to those options provided in paragraph (1)(A) - (E) of this section.

(e) In evaluating a request to return to active status, the Licensure Committee or the full board may require a personal appearance by the certificate or permit holder at the offices of the board, and may also require a physical or mental examination by one or more physicians or other health care providers approved in advance and in writing by the executive director or the Licensure Committee, or other designee(s) determined by majority vote of the board.

(f) A retired certificate or permit holder who has obtained an exemption from the registration fee as provided for under this section,

may be subject to disciplinary action under the Act, §601.302, based on unprofessional or dishonorable conduct likely to deceive, defraud, or injure the public if the certificate holder engages in activities requiring a certificate or permit.

(g) A retired certificate or permit holder who attempts to obtain an exemption from the registration fee under this section by submitting false or misleading statements to the board shall be subject to disciplinary action pursuant to the Act, §601.302, in addition to any civil or criminal actions provided for by state or federal law.

§194.11. Exemption from Registration Fee for Retired Certificate or NCT General Registration Permit Holders Providing Voluntary Charity Care.

(a) A retired holder of a certificate or NCT General Registration permit by the board whose only practice is the provision of voluntary charity care shall be exempt from the registration fee.

(b) As used in this section:

(1) "voluntary charity care" means medical care provided for no compensation to:

(A) indigent populations;

(B) in medically underserved areas; or

(C) for a disaster relief organization.

(2) "compensation" means direct or indirect payment of anything of monetary value, except payment or reimbursement of reasonable, necessary, and actual travel and related expenses.

(c) To qualify for and obtain such an exemption, a certificate or permit holder must truthfully certify under oath, on a form approved by the board that the following information is correct:

(1) the certificate or permit holder's practice of medical radiologic technology does not include the provision of services for either direct or indirect compensation which has monetary value of any kind;

(2) the certificate or permit holder's practice of medical radiologic technology is limited to voluntary charity care for which he or she receives no direct or indirect compensation of any kind for services rendered; and

(3) the certificate or permit holder's practice of medical radiologic technology does not include the provision of services to members of the certificate holder's family.

(d) A retired certificate or permit holder who qualifies for and obtains an exemption from the registration fee authorized under this section shall obtain and report continuing education as required under the Act and §194.7 of this chapter (relating to Biennial Renewal of Certificate or Placement on the Board's General Registry for Non-Certified Technicians Generally).

(e) A retired certificate or permit holder who has obtained an exemption from the registration fee as provided for under this section, may be subject to disciplinary action under the Act, §601.302, based on unprofessional or dishonorable conduct likely to deceive, defraud, or injure the public if the certificate or permit holder engages in activities requiring a certificate or other required authorization.

(f) A retired or permit certificate holder who attempts to obtain an exemption from the registration fee under this section by submitting false or misleading statements to the board shall be subject to disciplinary action pursuant to the Act §601.302, in addition to any civil or criminal actions provided for by state or federal law.

(g) A certificate or permit holder may return to active status by:

(1) applying to the board;

(2) paying an application fee equal to an application fee for a certificate or permit holder;

(3) complying with the requirements for certificate or permit renewal under the Act;

(4) providing current verifications from each state in which the certificate or permit holds a license, certificate, permit, or registration, as applicable;

(5) providing current verifications of certification by ARRT or NMTCB, as applicable;

(6) submitting professional evaluations from each employment held after the license was placed on retired status; and

(7) complying with subsection (h) of this section.

(h) Licensure Committee or Executive Director Recommendations.

(1) The request of a certificate or permit holder seeking a return to active status whose certificate or permit has been placed on official retired status for two years or longer shall be submitted to the Licensure Committee of the board for consideration and a recommendation to the full board for approval or denial of the request. After consideration of the request and the recommendation of the Licensure Committee, the Licensure Committee shall make a recommendation to the full board for approval or denial. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request subject to such conditions which the board determines are necessary to adequately protect the public including, but not limited to the following terms:

(A) completion of specified continuing education hours directly or indirectly related to the disciplines of radiologic technology and offered by an institution accredited by a regional accrediting organization such as SACS, or by JRCERT, JRCNMT, JTCCVT, CCE, ABHES, or ASRT;

(B) current certification by ARRT or NMTCB, as applicable;

(C) limitation and/or exclusion of the practice of the applicant to specified activities of the practice;

(D) remedial education; and

(E) such other remedial or restrictive conditions or requirements which, in the discretion of the board are necessary to ensure protection of the public and minimal competency of the applicant to safely practice.

(2) The request of a certificate or permit holder seeking a return to active status whose certificate has been placed on official retired status for less than two years may be approved by the executive director of the Medical board or submitted by the executive director to the Licensure Committee of the board, for consideration and a recommendation to the full board for approval or denial of the request. In those instances in which the executive director submits the request to the Licensure Committee of the board, the Licensure Committee shall make a recommendation to the full board for approval or denial. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request subject to such conditions which the board determines are necessary to adequately protect the public including, but not limited to those options provided in paragraph (1)(A) - (E) of this subsection.

(i) In evaluating a request to return to active status, the Licensure Committee or the full board may require a personal appearance by the certificate holder at the offices of the board, and may also require a physical or mental examination by one or more physicians or other health care providers approved in advance in writing by the executive director, the secretary, the Licensure Committee, or other designee(s) determined by majority vote of the board.

§194.12. Standards for the Approval of Certificate Program Curricula and Instructors.

(a) General certificate programs. All curricula and programs to train individuals to perform radiologic procedures must be accredited by accrediting organizations recognized by:

(1) the Council for Higher Education Accreditation, including but not limited to: the JRCNMT; or

(2) the United States Secretary of Education, including, but not limited to JRCERT, ABHES, or SACS.

(b) Limited Certificate Programs. All programs and curricula training individuals to perform limited radiologic procedures must:

(1) be accredited by JRCERT, ABHES, or SACS to offer a limited curriculum in radiologic technology;

(2) be accredited by JRCCVT to offer a curriculum in invasive cardiovascular technology; or

(3) be approved by the board under subsections (d) - (g) of this section prior to the program's start date and be offered within the geographic limits of the Texas.

(c) Application procedures for limited certificate programs accredited by JRCERT, ABHES, SACS, or JRCCVT.

(1) Application shall be made by the program director on official forms available from the board.

(2) The application must be notarized and shall be accompanied by the following items:

(A) the limited curriculum application fee, in accordance with Chapter 175 of this title (relating to Fees and Penalties);

(B) a copy of the current accreditation issued to the program by JRCERT, ABHES, SACS, or JRCCVT;

(C) a description in narrative and/or table format clearly indicating that the applicable content of the limited certificate program curriculum is equal to the general certificate curriculum; and

(D) an agreement to allow the board to conduct an administrative audit of the program to determine compliance with this section.

(d) Application procedures and eligibility requirements for limited certificate programs not accredited.

(1) Documentation Requirements.

(A) An application shall be submitted to the board on a form prescribed by the board at least 10 weeks prior to the starting date of the program to be offered by a sponsoring institution. The application must be completed and signed by the program director of the sponsoring institution's program. Program directors shall be responsible for the curriculum, the organization of classes, the maintenance and availability of facilities and records, and all other policies and procedures related to the program or course of study.

(B) All official application forms must be notarized and must be accompanied by the application fee in accordance with Chapter 175 of this title.

(C) An original copy of the application and supporting documentation must be submitted in one or more three-ring binders, with all pages consecutively numbered and containing legible information. Each application binder must be organized with a table of contents and tabbed sections clearly marked so as to correspond with the required items listed in this section. If any listed item is inapplicable, a tab designated to that section must be included, and must contain at a minimum a statement explaining the inapplicability. All materials provided must contain typewritten information, double-spaced, and clearly legible. All signatures on the official forms and supporting documentation must be originals. Photocopied signatures will not be accepted.

(D) Notices will be mailed to applicants informing the applicant of any items lacking.

(2) Content of Application. At a minimum, an applicant must provide the following information:

(A) the program or course of study's anticipated dates;

(B) the program or course of study's daily hours;

(C) the program or course of study's location, mailing address, phone, and facsimile numbers;

(D) a list of instructors approved by the board, in accordance with subsection (f) of this section, and any other persons responsible for the program's operation, including management and administrative personnel. The list must include specific information as to each instructor's assigned course of instruction, or the area(s) of responsibility for the non-instructional staff;

(E) a list of clinical facilities, written agreements on forms prescribed by the board from clinical facilities signed by the program director and the chief executive officer(s) of each facility, and clinical schedules, including the following items identified for each clinical site utilized. A clinical facility which is not listed on the application may not be utilized for a student's clinical practicum until the board has accepted the additional clinical facility in accordance with paragraph (6) of this subsection. The items are:

(i) the number and types (name brands and model numbers) of radiologic equipment to be utilized in the limited curriculum;

(ii) a copy of the current registration(s) for the radiologic equipment from the Texas Department of State Health Services Radiation Control Program (DSHS);

(iii) the number and location(s) of examination rooms available;

(iv) whether or not the clinical facility is accredited by the Joint Commission or certified to participate in the federal Medicare program, and if required, is licensed by the appropriate statutory authority. For example, if the facility is an ambulatory surgical center, licensure by DSHS is required;

(v) an acknowledgment that students may only perform radiologic procedures under the supervision of a practitioner, a limited medical radiologic technologist (LMRT) employed at the clinical facility or medical radiologic technologist (MRT) employed at the clinical facility;

(vi) certificate numbers of the LMRTs or MRTs who will supervise the students at all times while performing radiologic procedures;

(vii) an acknowledgment that the students in a limited curriculum program in the categories of skull, chest, spine, ab-

domen, extremities, chiropractic, or podiatric will not perform procedures utilizing contrast media, mammography, fluoroscopy, tomography, nuclear medicine studies, radiation therapy or other procedures beyond the scope of the limited curriculum; and

(viii) an acknowledgment that the students in a limited curriculum program in the cardiovascular category shall not perform mammography, tomography, nuclear medicine studies, radiation therapy or other procedures beyond the scope of the limited curriculum. Such students may only perform radiologic procedures of the cardiovascular system which involve the use of contrast media and fluoroscopic equipment.

(F) clearly defined and written policies regarding admissions, costs, refunds, attendance, disciplinary actions, dismissals, re-entrance, and graduation which are provided to all prospective students prior to registration and by which the program director shall administer the program. The admission requirements shall include the minimum eligibility requirements for certification in accordance with §194.6 of this chapter (relating to Procedural Rules and Minimum Eligibility Requirements for Applicants for a Certificate or Placement on the Board's Non-Certified Technician General Registry);

(G) the name of the program director who is an approved instructor in accordance with subsection (f) of this section, and who has not less than three years of education or teaching experience in the appropriate field or practice;

(H) a letter of acknowledgment and a photocopy of the current Texas license from a practitioner in the appropriate field of practice who is knowledgeable in radiation safety and protection and who shall be known as the designated medical director. The practitioner shall work in consultation with the program director in developing goals and objectives and in implementing and assuring the quality of the program;

(I) a letter or other documentation from the Texas Workforce Commission, Proprietary Schools Section, indicating that the proposed training program has complied with or has been granted exempt status under the Texas Proprietary School Act, Texas Education Code, Chapter 32, or verification of accreditation by the Texas Higher Education Coordinating Board; and

(J) the correct number of students to be enrolled in each cycle of the program, and if more than one cycle will be conducted concurrently, the maximum number of students to be enrolled at any one time.

(3) All applications must identify the type of curriculum according to the limited categories in accordance with §194.6 of this chapter. Each application must be accompanied by an outline of the curriculum and course content which clearly indicates that students must complete a structured curriculum in proper sequence according to subsection (e) of this section. If the curriculum differs from that set out in subsection (e) of this section, a typed comparison in table format clearly indicating how the curriculum differs from the required curriculum, including the number of hours for each topic or unit of instruction, shall be included.

(4) In making application to the board, the program director shall agree in writing to:

(A) provide a ratio of not more than three students to one full-time certified medical radiologic technologist engaged in the supervision of the students in the clinical environment;

(B) provide on-site instruction and direction by a practitioner for students when performing radiologic procedures on human beings;

(C) prohibit students from being assigned to any situation where they would be required to apply radiation to a human being while not under the on-site instruction or direction of a practitioner;

(D) prohibit intentional exposure to human beings from any source of radiation except for medically prescribed diagnostic purposes;

(E) provide appropriate facilities, sufficient volume of procedures, and a variety of diagnostic radiologic procedures to properly conduct the course. Facilities, agencies, or organizations utilized in the program shall be accredited or certified and licensed by the appropriate agencies. Equipment and radioactive materials utilized in the program shall be used only in facilities registered or licensed by the DSHS's Radiation Control Program;

(F) keep an accurate record of each student's attendance and participation, evaluation instruments and grades, clinical experience including radiation exposure history, and subjects completed for not less than five years from the last date of the student's attendance. Such records shall be made available to examining boards, regulatory agencies, and other appropriate organizations, if requested;

(G) issue to each student, upon successful completion of the program, a written statement in the form of a diploma or certificate of completion, which shall include the program's name, the student's name, the date the program began, the date of completion, the categories of instruction, and the signatures of the program director or independent sponsor and medical director/program advisor;

(H) site inspections by board representatives to determine compliance and conformity with the provision of this section will be at the discretion of the board;

(I) understand and recognize that the graduates' success rate on the prescribed examination will be monitored by the board and utilized as a measure for rescinding approval. In addition to this criteria, the board may rescind approval in accordance with §194.22 of this chapter (relating to Grounds for Denial of Certificate, Registration, or Other Approval, and for Disciplinary Actions); and

(J) comply with the Texas Regulations for the Control of Radiation, including but not limited to, personnel monitoring devices for each student upon the commencement of the clinical instruction and clinical experience.

(5) A site visit may be necessary to grant approval of the program. If a site visit is required, a site visit fee must be paid in accordance with Chapter 175 of this title.

(6) Following program approval, one or more written requests for amendment(s) shall be submitted to and approved by the board in advance of taking the anticipated action. The request to add or drop an instructor, clinical site, category of instruction, program director or other change, shall be accompanied by the limited curriculum program amendment application and fee in accordance with Chapter 175 of this title.

(e) Program Curricula Requirements. Each student must complete a curriculum which meets or exceeds the following requirements:

(1) at least 132 clock hours of basic theory or classroom instruction in the categories of skull, chest, extremities, spine, and chiropractic practice, and not less than 66 clock hours of basic theory instruction for podiatry is required. The required clock hours of basic theory/classroom instruction need not be repeated if two or more categories of curricula are completed simultaneously or to add a category to a temporary limited or limited certificate. Pediatric instruction shall be included in the hours of training. The following subject areas and minimum number of hours must be included in all programs and in-

structor directed. The subject areas and minimum clock hours for each shall be:

(A) radiation protection for the patient, self, and others--40;

(B) radiographic equipment, including safety standards, operation, and maintenance--15;

(C) image production and evaluation--35;

(D) applied human anatomy and radiologic procedures--20;

(E) patient care and management essential to radiologic procedures and recognition of emergency patient conditions and initiation of first aid--10;

(F) medical terminology--6; and

(G) medical ethics and law--6; and

(2) a clinical practicum for each category of limited curriculum including pediatrics is required. The practicum must include clinical instruction and clinical experience under the instruction or direction of a practitioner and an MRT or LMRT in accordance with the following chart.

Figure: 22 TAC §194.12(e)(2)

(A) The clinical instruction must be concurrent with the classroom instruction, as set out in paragraph (1) of this subsection.

(B) The clinical experience must commence immediately following the clinical instruction and be completed within 180 calendar days of the starting date of the clinical experience. Variances from this must be for good cause and approved in advance by the board. A request for a variance must be submitted in writing to the board. For the purposes of this section, a pregnancy or other medical disability shall constitute good cause.

(C) For the skull category, the 100 hours of clinical experience must include a minimum of four independently performed procedures, with at least one of the four procedures being of the mandible, and the remaining three including the skull (posterior/anterior, anterior/posterior, lateral and occipital), paranasal sinuses, and facial bones. The mandible procedure may be completed by simulation with 90% accuracy. Only one student shall receive credit for any one radiologic procedure performed.

(D) The program director shall be responsible for supervising and directing the evaluation of the students' clinical experience and shall certify in writing that the students have or have not successfully completed the required clinical instruction and clinical experience. Such written documentation must be provided to each student within 14 working days of completion of the clinical experience. Persons who participate in the evaluation of students' clinical experience must be an MRT or LMRT and have a minimum of two years of practical work experience performing radiologic procedures. For cardiovascular programs, person(s) who make the final evaluation of students' clinical experience must be MRT(s) or LMRT(s) and have a minimum of two years of practical work experience performing cardiovascular procedures.

(E) A limited medical radiologic technologist may not teach, train, or provide clinical instruction in a program or course of study different from the technologist's current level of certification. An LMRT who holds a limited certificate in spine radiography may not teach, train, or provide clinical instruction in a limited course of study for chest radiography.

(f) Application procedures and eligibility requirements for instructors in limited certificate programs.

(1) Except as otherwise provided, all persons who will provide instruction and training in the limited certificate courses of study or programs must obtain approval by the board prior to initiating instruction or training.

(2) To obtain board approval, all instructor(s) must at a minimum:

(A) submit an application on a form prescribed by the board;

(B) pay the required application fee, as set forth under Chapter 175 of this title;

(C) successfully complete an education program in accordance with this section and not less than six months classroom or clinical experience teaching the subjects assigned;

(D) meet and maintain standards required by a sponsoring institution, if any;

(E) have at least one or more of the following qualifications:

(i) be a currently certified MRT who is also currently credentialed as a radiographer by the American Registry of Radiologic Technologists (ARRT);

(ii) be a currently certified LMRT (excluding a temporary certificate) whose limited certificate category(ies) matches the category(ies) of instruction and training;

(iii) be a practitioner who is in good standing with all appropriate regulatory agencies including, but not limited to, DSHS, the Texas Board of Chiropractic Examiners, Texas Medical Board, Texas State Board of Podiatric Medical Examiners, the Texas Health and Human Services Commission, and the United States Department of Health and Human Services; or

(iv) be a currently licensed medical physicist; and

(F) submit to the board any other information the board considers necessary to evaluate the applicant's qualifications.

(3) Documentation Requirements. The applicant must submit satisfactory documentation of the above minimum requirements, as required by the board.

(g) Limited certificate educational program and instructor process for approval or denial. The process for approval or denial of applications for program approval are subject to the procedures outlined in §194.6(g) of this chapter.

§194.13. Mandatory Training Programs for Non-Certified Technicians.

(a) General. This section sets out the minimum standards for board approval of mandatory training programs, as required by the Act, §601.201, which are intended to train individuals to perform radiologic procedures which have not been identified as dangerous or hazardous. Individuals who complete an approved training program may not use that training toward the educational requirements for a general or limited certificate. Before a person performs a radiologic procedure, the person must complete all the hours in subsection (d)(2)(A) - (C) of this section, and at least one unit in subsection (d)(3)(A) - (G) of this section.

(b) Instructor direction required. All hours of the training program completed for the purposes of this section must be live and inter-

active and directed by an approved instructor. No credit will be given for training completed by self-directed study or correspondence.

(c) Instructor qualifications.

(1) An instructor(s) shall have education in accordance with §194.12 of this chapter (relating to Standards for the Approval of Certificate Program Curricula and Instructors), not less than six months classroom or clinical experience teaching the subjects assigned, meet the standards required by a sponsoring institution, if any, and meet at least one or more of the following qualifications:

(A) be a currently certified MRT who is also currently credentialed as a radiographer by the American Registry of Radiologic Technologists;

(B) be a currently certified LMRT (excluding a temporary certificate) whose limited certificate category(ies) matches the category(ies) of instruction and training; or

(C) be a practitioner who is in good standing with all appropriate regulatory agencies including, but not limited to, DSHS, the Texas Board of Chiropractic Examiners, Texas Medical Board, or Texas State Board of Podiatric Medical Examiners, the Texas Health and Human Services Commission, the United States Department of Health and Human Services.

(2) An LMRT may not teach, train, or provide clinical instruction in a portion of a training program that is different from the LMRT's level of certification. An LMRT holding a limited certificate in the chest and extremities categories may not participate in the portion of a training program relating to radiologic procedures of the spine. The LMRT may participate in the portions of the training program which are of a general nature and those specific to the specific categories on the limited certificate.

(d) Training requirements. In order to successfully complete a program, each student must complete the following minimum training:

(1) prerequisites recommended for admission include high school graduation or general equivalency diploma; certified medical assistant; graduation from a medical assistant program; or six months full time patient care experience under the supervision of a practitioner.

(2) courses which are fundamental to diagnostic radiologic procedures:

(A) radiation safety and protection for the patient, self and others--22 classroom hours;

(B) image production and evaluation--24 classroom hours; and

(C) radiographic equipment maintenance and operation--16 classroom hours which includes at least 6 hours of quality control, darkroom, processing, and Texas Regulations for Control of Radiation; and

(3) one or more of the following units of applied human anatomy and radiologic procedures of the:

(A) skull (5 views: Caldwell, Townes, Waters, AP/PA, and lateral)--10 classroom hours;

(B) chest--8 classroom hours;

(C) spine--8 classroom hours;

(D) abdomen, not including any procedures utilizing contrast media--4 classroom hours;

(E) upper extremities--14 classroom hours;

(F) lower extremities--14 classroom hours; and/or

(G) podiatric--5 classroom hours.

(e) Application procedures for training programs. An application shall be submitted to the board at least 30 days prior to the starting date of the training program. Official application forms are available from the board and must be completed and signed by an approved instructor, who shall be designated as the training program director. The training program director shall be responsible for the curriculum, the instructors, and determining whether students have successfully completed the training program.

(1) Official application forms must be executed in the presence of a notary public and shall be accompanied by the application fee in accordance with Chapter 175 of this title (relating to Fees and Penalties). Photocopied signatures will not be accepted.

(2) Application forms and fees shall be mailed to the address indicated on the application materials. The board is not responsible for lost, misdirected, or undeliverable application forms. An application received without the application fee will be returned to the applicant.

(f) Application materials. The application shall include, at a minimum:

(1) the beginning date and the anticipated length of the training program;

(2) the number of programs which will be conducted concurrently and whether programs will be conducted consecutively;

(3) the number of students anticipated in each program;

(4) the daily hours of operation;

(5) the location, mailing address, phone and facsimile numbers of the program;

(6) the name of the training program director;

(7) a list of the names of the approved instructors and the topics each will teach, and a list of management and administrative personnel and any practitioners who will participate in conducting the program;

(8) clearly defined and written policies regarding the criteria for admission, discharge, readmission and completion of the program;

(9) evidence of a structured pre-planned learning experience with specific outcomes;

(10) a letter or other documentation from the Texas Workforce Commission, Proprietary Schools Section indicating that the proposed training program has complied with or has been granted exempt status under the Texas Proprietary School Act, Texas Education Code, Chapter 32. If approval has been granted by the Texas Higher Education Coordinating Board, a letter or other documentation is not necessary; and

(11) specific written agreements to:

(A) provide the training as set out in subsection (d) of this section and provide not more than 75 students per instructor in the classroom;

(B) advise students that they are prohibited from performing radiologic procedures which have been identified as dangerous or hazardous in accordance with §194.17 of this chapter (relating to Dangerous or Hazardous Procedures) unless they become an LMRT, MRT or a practitioner;

(C) use written and oral examinations to periodically measure student progress;

(D) keep an accurate record of each student's attendance and participation in the program, accurate evaluation instruments and grades for not less than five years. Such records shall be made available upon request by the board or any governmental agency having authority;

(E) issue to each student who successfully completes the program a certificate or written statement including the name of the student, name of the program, dates of attendance and the types of radiologic procedures covered in the program completed by the student;

(F) retain an accurate copy for not less than five years and submit an accurate copy of the document described in subparagraph (E) of this paragraph to the board within 30 days of the issuance of the document to the student; and

(G) permit site inspections by employees or representatives of the board to determine compliance with this section.

(g) Process for approval or denial. The process for approval or denial of applications for program approval are subject to the procedures outlined in §194.6(g) of this chapter (relating to Procedural Rules and Minimum Eligibility Requirements for Applicants for a Certificate or Placement on the Board's Non-Certified Technician General Registry).

(h) Renewal.

(1) The training program director shall be responsible for renewing the approval of the training program on or before the anniversary date of the initial application.

(2) Failure to submit the renewal form and renewal fee will result in the expiration of the training program's approval. In the case that the approval is expired, to obtain a new approval, the training program must reapply meet all requirements for approval under this section.

(3) A training program which does not renew the approval shall cease representing the program as an approved training program. The program director shall notify currently enrolled students that the training program is no longer approved under this section. The notification shall be in writing and must be issued within ten days of the expiration of the approval.

§194.14. Alternate Training Requirements for Podiatric Medical Assistants.

(a) General. This section sets out the minimum training standards of podiatric medical assistants (PMAs).

(b) Instructor direction required. All hours of the training program completed for the purposes of this section must be live and interactive and directed by an instructor approved by the board. Distance learning activities and audiovisual teleconferencing may be utilized, provided these include two-way, interactive communications which are broadcast or transmitted at the actual time of occurrence. Appropriate on-site supervision of persons participating in the distance learning activities or teleconferencing shall be provided by the approved training program. No credit will be given for training completed by self-directed study or correspondence. The provisions of this subsection shall not apply to the out of classroom training requirements for podiatric medical assistants.

(1) Before a PMA performs a radiologic procedure, the PMA must complete the hours stated in subsection (d) of this section, or the hours stated in §194.13 of this chapter (relating to Mandatory Training Programs for Non-Certified Technicians) concerning an NCT's mandatory training requirements specific to podiatric radiologic procedures.

(2) Individuals who complete training approved under this section may not use that training toward the educational requirements for a general or limited certificate as set out in §194.6 of this chapter (relating to Procedural Rules and Minimum Eligibility Requirements for Applicants for a Certificate or Placement on the Board's Non-Certified Technician General Registry).

(c) Approved instructors.

(1) For purposes of this section, an individual is approved by the board to teach in a training program if the individual meets the requirements of §194.12 of this chapter (relating to Standards for the Approval of Certificate Program Curricula and Instructors). The application for the training program must demonstrate that the instructors meet the qualifications. No application for individual instructor approval is required.

(2) An LMRT may not teach, train, or provide clinical instruction in a portion of a training program which is different from the LMRT's level of certification. An LMRT holding a limited certificate in the chest and extremities categories may not participate in the portion of a training program relating to radiologic procedures of the spine. The LMRT may participate in the portions of the training program which are of a general nature and those specific to the specific categories on the limited certificate.

(d) Training requirements for PMAs.

(1) In order to successfully complete a program, a PMA must complete the following training:

(A) radiation safety and protection for the patient, self, and others--5 classroom hours and 5 out of classroom hours;

(B) radiographic equipment used in podiatric medicine, including safety standards, operation, and maintenance--1 classroom hour and 2 out of classroom hours;

(C) podiatric radiologic procedures, imaging production and evaluation--1 classroom hour and 4 out of classroom hours; and

(D) methods of patient care and management essential to radiologic procedures, excluding CPR, BCLS, ACLS and similar subjects--1 classroom hour and 1 out of classroom hour.

(2) Successful completion of PMA training allows the PMA to perform radiologic procedures only under the instruction or direction of a podiatrist.

(3) The out of classroom training hours require successful completion of learning objectives approved by the board as verified by the supervising podiatrist.

(e) Application procedures for training programs. The board shall use the same process as described in §194.13 of this chapter.

(f) Process for approval or denial. The process for approval or denial of applications for program approval are subject to the procedures outlined in §194.6(g) of this chapter.

§194.15. Bone Densitometry Training.

(a) The provisions of this section do not apply to a person who is certified or registered under the Act, a practitioner, a registered nurse, a physician assistant, or other licensed or certified person who is authorized to operate a bone densitometry unit which utilizes x-radiation.

(b) A person who operates a bone densitometry unit(s) which utilizes x-radiation who is in compliance with this section is not required to obtain a hardship exemption as long as the person is not performing radiologic procedures other than bone densitometry.

(c) A person who operates a bone densitometry unit(s) which utilizes x-radiation must have proof that the person is a certified densitometry technologist in good standing with the International Society for Clinical Densitometry (ISCD), or have successfully completed the ARRT bone density exam or has completed at least 20 hours of training as follows:

(1) 16 hours of specific training using bone densitometry equipment utilized x-radiation, presented by a medical radiologic technologist (MRT) or an equipment applications specialist knowledgeable of the specific equipment to be utilized; and

(2) 4 hours of radiation safety and protection training for the patient, operator and others. The training shall be presented by an MRT or a licensed medical physicist. A person must complete the 4 hours of radiation safety and protection training every 2 years.

(d) Documentation of operator training must be kept on site.

§194.16. Hardship Exemptions.

(a) General.

(1) A hospital, federally qualified health center (FQHC) as defined by 42 U.S.C. Section 1396d, or practitioner may apply to the board for a hardship exemption from employing an MRT, LMRT, or NCT.

(2) The applicant must demonstrate a hardship in employing an MRT, LMRT, or NCT, and must provide information indicating that the individuals who will perform radiologic procedures meet the minimum requirements as described in subsection (b)(5) of this section.

(3) The applicant shall not allow the individual(s) named in the application to perform a radiologic procedure until the board grants a hardship exemption.

(4) A hardship exemption granted by the board does not constitute licensure, certification, registration, or authorization to perform a dangerous or hazardous radiologic procedure or mammography.

(5) No more than seven individuals will be allowed to perform radiologic procedures under the hardship exemption, if granted.

(b) Required application materials.

(1) The applicant must apply for a hardship on the forms prescribed by the board and must be accompanied by the appropriate fee, as provided under chapter 175 of this title (relating to Fees and Penalties). The date of application shall be the date the application and application fee is postmarked. If there is no visible postmark, or if the application is hand-delivered, the application date shall be the date the board receives the application.

(2) The application must be accompanied by documentation clearly indicating that the applicant is a licensed hospital, FQHC, or practitioner. A copy of the current hospital license, certificate of qualification issued to the FQHC, or current license of the practitioner shall be acceptable documentation.

(3) If the application is from a hospital or FQHC, the administrator or chief executive officer of the hospital or FQHC must sign the application form. If the applicant is a practitioner, the practitioner must sign the application form.

(4) The applicant must meet the following requirements:

(A) Each individuals named in the application as hired or employed to perform radiologic procedures under the hardship exemption must:

(i) graduate from high school or its equivalent as determined by the Texas Education Agency;

(ii) attain at least 18 years of age;

(iii) provide a complete and legible set of fingerprints, on a form prescribed by the board, to the board or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation;

(iv) be mentally and physically able to perform radiologic procedures; and

(v) be of good professional character as defined under §194.2 of this chapter (relating to Definitions).

(B) The applicant must meet one or more of the following requirements:

(i) if the applicant is unable to attract or retain an MRT or LMRT, a sworn affidavit describing the reasons the applicant is unable attract and retain an MRT or LMRT at a comparable salary for the area, the applicant's attempts to attract and retain an MRT or LMRT, evidence of recruiting efforts during the 30-day period prior to application for the hardship exemption, and copies of advertisements to hire an MRT or LMRT;

(ii) if the applicant is located more than 200 highway miles from the nearest school of medical radiologic technology approved in accordance with §194.12 of this chapter (Standards for the Approval of Certificate Program Curricula and Instructors) or §194.13 of this chapter (relating to Mandatory Training Programs for Non-Certified Technicians), a sworn affidavit describing in narrative form the physical address of the nearest school of medical radiologic technology; the physical address of the applicant hospital, FQHC, or primary practice location of the practitioner; and the actual distance in highway miles between the school and the applicant hospital, FQHC, or practitioner's primary practice. The applicant shall include a map of the area clearly indicating the locations of each entity;

(iii) if the nearest school of medical radiologic technology approved in accordance with §194.12 and §194.13 of this chapter has a waiting list of school applicants due to a lack of faculty or space, a sworn affidavit from the applicant indicating that admissions to the school are pending because of a lack of faculty or space;

(iv) if the applicant's need for graduates in medical radiologic technology exceeds the number of graduates from the nearest school of medical radiologic technology approved in accordance with §194.12 of this chapter, a sworn affidavit from the applicant indicating that the number of graduates from the nearest school does not meet the applicant's needs for radiologic technologists;

(v) if emergency conditions have occurred during the 90 days prior to making application for the hardship exemption, a sworn affidavit from the applicant describing the emergency conditions, the hardship(s) the emergency conditions have created and how long the hardship(s) is anticipated to continue. For the purposes of this subparagraph, emergency conditions may include a disaster, epidemic, or other catastrophic event;

(vi) if the applicant uses only a hand-held fluoroscope with a maximum operating capability of 65 kilovolts and 1 milliampere, or a similar type of x-ray unit for imaging upper extremities

only, at the location indicated on the application form and the applicant believes that the radiation produced by the radiographic equipment represents a minimal threat to the patient and the operator of the equipment, the following is required to be submitted:

(I) a copy of the current certificate of registration for radiation machine issued by DSHS; and

(II) a sworn affidavit describing the equipment used; the types of radiographs performed; the training completed by the operator of the equipment within the 24-month period prior to application or reapplication for a hardship exemption; the date(s) the training was completed by the operator; the radiation safety measures taken for the patient, operator and others; the level or amount of supervision provided by an MRT or a practitioner(s) to the operator while performing the radiographic procedure; and the equipment manufacturer's specifications for the diagnostic radiographic equipment utilized at the location indicated on the application form, including the maximum operating capability.

(5) All application materials and information are subject to verification by the board.

(6) The board shall send a written notice listing the additional materials required to an applicant whose application is incomplete. An application not completed within 30 days after the date of the written notice shall be invalid unless the applicant has advised the board of a valid reason for the delay.

(c) Application approval. If granted by the board, a letter of exemption shall be issued for a period of one year.

(d) The process for approval or denial of applications for program approval are subject to the procedures outlined in §194.6(g) of this chapter (relating to Procedural Rules and Minimum Eligibility Requirements for Applicants for a Certificate or Placement on the Board's Non-Certified Technician General Registry). An applicant whose application has been disapproved §194.6(g) of this chapter shall be permitted to reapply after a period of not less than one year from the date of the disapproval and shall submit a new application and supporting information. The applicant may reapply for an exemption any time the basis for the exemption application changes.

(e) Reapplication for hardship exemption.

(1) The hospital, FQHC, or a practitioner must reapply annually for the exemption and meet the then current requirements for a hardship exemption.

(2) A hospital, FQHC, or a practitioner who does not reapply for an exemption shall not allow a person to perform a radiologic procedure unless the person is a practitioner, MRT, LMRT, or NCT.

§194.17. Dangerous or Hazardous Procedures.

(a) General. This section identifies radiologic procedures which are dangerous or hazardous and may only be performed by a practitioner, medical radiologic technologist (MRT) or limited medical radiologic technologist (LMRT). A person trained under §194.13 of this chapter (relating to Mandatory Training Programs for Non-Certified Technicians) or §194.14 of this chapter (relating to Alternate Training Requirements for Podiatric Medical Assistants) is not an MRT, LMRT or otherwise certified under the Act and shall not perform a dangerous or hazardous procedure identified in this section unless expressly permitted by this section.

(b) Dangerous procedures. Except as otherwise provided in this chapter, the list of dangerous procedures which may only be performed by a practitioner or MRT are:

(1) nuclear medicine studies to include positron emission tomography (PET);

(2) administration of radio-pharmaceuticals; administration does not include preparation or dispensing except as regulated under the authority of the Texas State Board of Pharmacy;

(3) radiation therapy, including simulation, brachytherapy and all external radiation therapy beams including Grenz rays:

(4) computed tomography (CT) or any variation thereof;

(5) interventional radiographic procedures, including angiography, unless performed by an LMRT with a certificate issued in the cardiovascular category;

(6) fluoroscopy unless performed by an LMRT with a certificate issued in the cardiovascular category; and

(7) cineradiography (including digital acquisition techniques), unless performed by an LMRT with a certificate issued in the cardiovascular category.

(c) Hazardous procedures. Unless otherwise noted, the list of hazardous procedures which may only be performed by a practitioner or MRT are:

(1) conventional tomography;

(2) skull radiography, excluding anterior-posterior/posterior-anterior (AP/PA), lateral, Townes, Caldwell, and Waters views;

(3) portable x-ray equipment;

(4) spine radiography, excluding AP/PA, lateral and lateral flexion/extension views;

(5) shoulder girdle radiographs, excluding AP and lateral shoulder views, AP clavicle and AP scapula;

(6) pelvic girdle radiographs, excluding AP or PA views;

(7) sternum radiographs; and

(8) radiographic procedures which utilize contrast media;

(9) pediatric radiography, excluding extremities, unless performed by an LMRT with the appropriate category. Pediatric studies must be performed with radioprotection so that proper collimation and shielding is utilized during all exposures sequences during pediatric studies. If an emergency condition exists which threatens serious bodily injury, protracted loss of use of a bodily function or death of a pediatric patient unless the procedure is performed without delay, or if other extenuating circumstances deemed by the practitioner exist, a pediatric radiographic procedure is also excluded. The emergency condition or extenuating circumstance must be documented by the ordering practitioner in the patient's clinical record and the record must document that a regularly scheduled MRT, LMRT, RN or physician assistant is not reasonably available to perform the procedure.

(d) Performance of a hazardous procedure by an LMRT. An LMRT may perform a radiologic procedure listed in subsection (c) of this section only if the procedure is within the scope of the LMRT's certification, as described in §194.6 of this chapter (relating to Procedural Rules and Minimum Eligibility Requirements for Applicants for a Certificate or Placement on the Board's Non-Certified Technician General Registry).

(e) Performance of a dangerous or hazardous procedure by a practitioner. This section does not authorize a practitioner to perform a radiologic procedure which is outside the scope of the practitioner's license.

(f) Dental radiography. This section does not apply to a radiologic procedure involving a dental x-ray machine, including panarex or other equipment designed and manufactured only for use in dental radiography.

(g) Mammography. In accordance with the Health and Safety Code, §401.421 et seq, mammography is a radiologic procedure which may only be performed by an MRT who meets the qualifications set out in 25 TAC Chapter 289 (relating to Radiation Control) of the Radiation Control Program rules specific to mammography. Mammography shall not be performed by an LMRT, an NCT, or any other person.

(h) Student performance of dangerous or hazardous procedures. The procedures identified in this section are not considered dangerous and hazardous for purposes of §601.056(a) of the Act if the person performing the procedures is a student enrolled in a program which meets the minimum standards adopted under §601.056 of the Act and if the person is performing radiologic procedures in an academic or clinical setting as part of the program. Therefore, such students may perform these procedures in such settings. Students may not perform procedures in an employment setting.

§194.18. Advertising or Competitive Bidding.

(a) A person, including a medical radiologic technologist, who is not certified under the Act shall not use the word "medical radiologic technologist", on any sign, display, or other form of advertising unless the person is expressly exempt from the certification requirement.

(b) A certificate or permit holder shall not use advertising that is false, misleading, or deceptive, as defined under §164.3 of this chapter (relating to Misleading or Deceptive Advertising) under this title.

(c) When an assumed name is used in a person's practice as a medical radiologic technologist, limited medical radiologic technologist, or non-certified technician, the individual's legal name or certificate or permit number must be listed in conjunction with the assumed name. An assumed name used by a medical radiologic technologist, limited medical radiologic technologist, or non-certified technician must not be false, misleading, or deceptive.

(d) A limited medical radiologic technology educational program or a training program for non-certified technicians shall not make false, misleading, or deceptive statements concerning the activities or programs of another limited medical radiologic technology education program or a training program for non-certified technicians.

(e) A limited medical radiologic technology educational program or a training program for non-certified technicians shall not maintain, advertise, solicit for or conduct any course of instruction intended to qualify a person for certification or placement on the registry without first obtaining approval from the board.

(f) Advertisement by an educational or training program seeking prospective students must clearly indicate that training is being offered, and shall not, either by actual statement, omission, or intimation, imply that prospective employees are being sought.

(g) Advertisements seeking prospective students must include the full and correct name of the educational or training program.

(h) No statement or representation shall be made to prospective or enrolled students that employment will be guaranteed upon completion of any program or that falsely represents opportunities for employment.

(i) No statement shall be made by an educational or training program that it has been accredited unless the accreditation is that of an appropriate nationally recognized accrediting agency published by the United States Office of Education.

(j) No educational or training program shall advertise an employment agency under the same name or a confusingly similar name or at the same location as the educational or training program. No representative shall solicit students for a program through an employment agency.

§194.19. Direct Supervision of a Student Required.

During a student's completion of a radiologic procedure, a practitioner must be physically present and immediately available.

§194.20. Identification Requirements.

An individual certified, registered, or otherwise permitted by the board shall keep the individual's certificate, registration, or permit available for inspection at the individual's primary place of business and shall, when engaged in professional activities, wear a name tag identifying the individual and providing the designated authority under which the procedures are performed.

§194.21. Scope of Practice.

(a) NCTs.

(1) NCTs registered under §194.13 of this chapter (relating to Mandatory Training Programs for Non-Certified Technicians) may not perform a dangerous or hazardous procedure as set out in §194.17 of this chapter (relating to Dangerous or Hazardous Procedures).

(2) All NCTs may only perform radiologic procedures under the supervision and direction of a practitioner, and must comply with all applicable statutes and rules under the laws governing the practice of the practitioner.

(b) LMRTs. Persons holding a limited certificate in one or more categories may not perform radiologic procedures involving the use of contrast media, utilization of fluoroscopic equipment, mammography, tomography, portable radiography, nuclear medicine, and/or radiation therapy procedures. However, a person holding a limited certificate in the cardiovascular category may perform radiologic procedures involving the use of contrast media and/or ionizing radiation for the purposes of diagnosing or treating a disease or condition of the cardiovascular system. Holding a limited certificate in all categories shall not be construed to mean that the holder of the limited certificate has the rights, duties, and privileges of a general certificate holder.

§194.22. Grounds for Denial of Certificate, Registration, or Other Approval, and for Disciplinary Action.

(a) The board may refuse to issue a certificate or other approval to any person and may, following notice and a hearing, take disciplinary or remedial action against any individual who commits a violation under §601.052 and §601.302 of the Act.

(b) Chapter 190 of this title (relating to Disciplinary Guidelines) shall apply to individuals regulated under this chapter to be used as guidelines for the following areas as they relate to the denial of certification, registration, or other authorization related to the provisions of this chapter or disciplinary action of a such individuals:

(1) unprofessional conduct;

(2) disciplinary action by state boards; and

(3) aggravating and mitigating factors.

(c) If the provisions of Chapter 190 of this title conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

(d) In addition to the actions outlined under Chapter 190 of this title, engaging in unprofessional conduct includes the following, but is not limited to:

(1) making any misleading, deceptive, or false representations in connection with service rendered;

(2) commits an act that is prohibited by state, federal, or local law connected to the practice of radiologic technology;

(3) performing a radiologic procedure on a patient or client which has not been authorized by a practitioner;

(4) aiding or abetting a person in violating the Act or rules adopted under the Act;

(5) any practice or omission that fails to conform to accepted principles and standards of the medical radiologic technology profession;

(6) performing or attempting to perform radiologic procedures or medical procedures which relate to or are necessary for the performance of a radiologic procedure in which the person is not trained by experience or education or in which the procedure is performed without appropriate supervision;

(7) performing a radiologic procedure which is not within the scope of a certificate or other authorization to perform radiologic procedures, as set out in §194.21 of this chapter (relating to Scope of Practice);

(8) failing to adequately supervise a person in the performance of radiologic procedures;

(9) engaging in, providing, or making false or misleading information or representations, including but not limited to:

(A) impersonating or acting as a proxy for an examination candidate for any examination required for certification under §194.6 of this chapter (relating to Procedural Rules and Minimum Eligibility Requirements for Applicants for a Certificate or Placement on the Board's Non-Certified Technician General Registry), or continuing education required under §194.7 of this chapter (relating to Biennial Renewal of Certificate or Placement on the Board's General Registry for Non-Certified Technicians Generally);

(B) concerning services rendered or status of certification or registration, including those that are conferred by certification bodies, or by another country, state, territory, or the District of Columbia;

(C) offering to provide education or training relating to radiologic technology;

(10) obtaining, attempting to obtain, or assisting another to obtain certification or placement on the registry by bribery or fraud, or allowing another individual to use the certificate or permit holder's name, certificate, or other professional credentials;

(11) failing to cooperate with the board or interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts to the board or its authorized representative or by use of threats or harassment against any person;

(12) defaulting on child support payments, as provided under Chapter 232 of the Texas Family Code, Texas Guaranteed Student Loan Corporation guaranteed student loan, as provided in the Texas Education Code, §57.491, or a non TGSLC-guaranteed student loan, as provided in the Texas Occupations Code, §56.003;

(13) knowingly concealing information relating to enforcement of the Act or this chapter; or

(14) engaging in sexual contact or sexually inappropriate behavior or comments directed toward or with a patient, or behaving in an abusive or assaultive, disruptive manner towards a patient or the patient's family or representatives or medical personnel that interferes with patient care or could be reasonably expected to adversely impact the quality of care rendered to a patient.

(e) An education program engages in unprofessional conduct if the program, including its employees or agents, violates any of the provisions of subsection (a) - (d) of this section or if the program:

(1) makes any misleading, deceptive, or false representations in connection with an application for approval of an education program, or allows an agent of the program to do so to related to any application for approval connected to the program;

(2) violates state or federal law related to operation of the program;

(3) aids or abets a person in violating the Act or rules adopted under the Act; or

(4) abandons an approved education program with currently enrolled students.

(f) The board may take disciplinary action against a student for intentionally practicing radiologic technology without direct supervision. For the purposes of this subsection, "intentionally" is defined as knowing or having reason to know that the physical presence and direct and continuous observation of a supervising MRT or practitioner is required during the performance of the radiologic procedure.

(g) In determining the appropriate action to be imposed in each case, the board shall take into consideration the following factors:

(1) the severity of the offense;

(2) the danger to the public;

(3) the number of repetitions of offenses;

(4) the length of time since the date of the violation;

(5) the number and type of previous disciplinary cases filed against the person or program;

(6) the length of time the person has performed radiologic procedures;

(7) the length of time the education program has been approved;

(8) the actual damage, physical or otherwise, to the patient or student, if applicable;

(9) the deterrent effect of the penalty imposed;

(10) the effect of the penalty upon the livelihood of the person or program;

(11) any efforts for rehabilitation; and

(12) any other mitigating or aggravating circumstances.

§194.23. Criminal Backgrounds.

This section sets out the guidelines and criteria related to the board's authority to deny certification, registration, other approval, or to take disciplinary action based upon a person's criminal background.

(1) The board may suspend or revoke any certificate, disqualify a person from receiving any certificate, or deny to a person the opportunity to be examined for a certificate if the person is convicted of or subject to a deferred adjudication, enters a plea of nolo contendere or guilty to a felony or misdemeanor, and if the crime directly relates to the duties and responsibilities of a certificate or permit holder.

(2) In considering whether a pleading of nolo contendere or a criminal conviction directly relates to the occupation of a certificate holder, the board shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for certification; and

(C) the extent to which a certification might offer an opportunity to engage in further criminal activity of the same type as that which the person previously has been involved.

(3) The following felonies and misdemeanors apply to any certificate because these criminal offenses indicate an inability or a tendency to be unable to perform as a certificate holder:

(A) the misdemeanor of knowingly or intentionally acting as a certificate holder without a certificate under the Act;

(B) any misdemeanor and/or felony offense defined as a crime of moral turpitude by statute or common law;

(C) a misdemeanor or felony offense involving:

(i) forgery;

(ii) tampering with a governmental record;

(iii) delivery, possession, manufacturing, or use of controlled substances and dangerous drugs;

(D) a misdemeanor or felony offense under various titles of the Texas Penal Code:

(i) Title 5 concerning offenses against the person;

(ii) Title 7 concerning offenses against property;

(iii) Title 9 concerning offenses against public order and decency;

(iv) Title 10 concerning offenses against public health, safety, and morals; and

(v) Title 4 concerning offenses of attempting or conspiring to commit any of the offenses in this subsection;

(4) The misdemeanors and felonies listed in paragraph (3) of this subsection are not exclusive. The Board may consider other particular crimes in special cases in order to promote the intent of the Act and these sections.

§194.24. Administrative Penalties.

(a) Pursuant to §601.351 of the Act, the board by order may impose an administrative penalty against a person regulated under the Act who violates the Act or a rule or order adopted under the Act.

(b) The penalty for each violation may be in an amount not to exceed $1,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on the following factors set forth under §601.352(b) of the Act:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter a future violation;

(4) efforts made to correct the violation; and

(5) any other matter that justice may require.

§194.25. Procedure.

Chapter 187 of this title (relating to Procedural Rules) shall govern procedures relating to persons subject to the Act where applicable. If the provisions of Chapter 187 of this title conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

§194.26. Compliance.

Chapter 189 of this title (relating to Compliance Program) shall be applied to persons subject to the Act and who are under board orders and remedial plans. If the provisions of Chapter 189 of this title conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

§194.27. Reissuance of Certificate or Permit Following Revocation.

(a) The applicant must complete in every detail the application for reissuance of a certificate, registration, or permit following revocation including payment of the required application fee.

(b) The applicant must appear before the board to state the reasons for the request for reissuance of certificate, registration, or permit.

(c) Application for reissuance of a certificate, registration, or permit following revocation cannot be considered more often than annually.

(d) Reissuance of a certificate, registration, or permit following revocation shall be at the discretion of the board upon a showing by the applicant that reissuance is in the best interest of the public.

(e) A person may not apply for reissuance of a certificate, registration, or permit that was revoked before the first anniversary date on which the revocation became effective.

§194.28. Complaints.

Chapter 178 of this title (relating to Complaints) shall govern individuals subject to the Act with regard to procedures for the initiation, filing and appeals of complaints and methods of notification for filing complaints with the agency. If the provisions of Chapter 178 of this title conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

§194.29. Investigations.

(a) Confidentiality. All complaints, adverse reports, investigation files, other investigation reports, and other investigative information in the possession of, or received, or gathered by the board, the Medical Board, or such boards' employees or agents relating to a certificate, registration, permit, or an application for such approval, or a criminal investigation or proceeding are privileged and confidential and are not subject to discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board, the Medical Board, or the boards' employees or agents involved in discipline of individuals subject to the Act.

(b) Patient identity. In any disciplinary investigation or proceeding regarding an individual subject to the Act and conducted under or pursuant to the Act, the board shall protect the identity of any patient whose medical records are examined and utilized in a public proceeding except for those patients who testify in the public proceeding or who submit a written release in regard to their records or identity.

(c) Permitted disclosure of investigative information. Investigative information in the possession of the board, the Medical Board, or its employees or agents which relates to licensee discipline and information contained in such files may not be disclosed except in the following circumstances:

(1) a licensing authority in another state or country in which the certificate holder or person is licensed, certified, or permitted or has applied for a license, certification, or permit; or

(2) a medical peer review committee reviewing:

(A) an application for privileges; or

(B) the qualifications of the certificate holder or person with respect to retaining privileges; and

(C) to other persons if required during the investigation.

(d) If investigative information in the possession of the board, the Medical board, or an employee or agent of the board or medical board indicates that a crime may have been committed, the board or Medical board, as appropriate, shall report the information to the proper law enforcement agency. The board and Medical board shall cooperate with and assist each law enforcement agency conducting a criminal investigation of a person subject to the Act by providing information relevant to the investigation. Confidential information disclosed to a law enforcement agency under this subsection remains confidential and may not be disclosed by the law enforcement agency except as necessary to further the investigation.

(e) Complaints. The board shall keep information on file about each complaint filed with the board, consistent with the Act. If a written complaint is filed with the board that the board has the authority to resolve relating to a person subject to the Act, the board, at least as frequently as quarterly and until final determination of the action to be taken relative to the complaint, shall notify in a manner consistent with the Act the parties to the complaint of the status of the complaint unless the notice would jeopardize an active investigation.

(f) Renewal of certificates, registration, or permits. A certificate, registration, or permit holder shall furnish a written explanation of his or her answer to any question asked on the application for certificate, registration, or permit renewal, if requested by the board. This explanation shall include all details as the board may request and shall be furnished within 14 days of the date of the board's request.

§ 194.30. Impaired Individuals.

(a) Mental or physical examination requirement.

(1) The board may require a person subject to the Act to submit to a mental and/or physical examination by a physician or physicians designated by the board if the board has probable cause to believe that the person is impaired. Impairment is present if one appears to be unable to practice radiologic technology with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material; or as a result of any mental or physical condition.

(2) Probable cause may include, but is not limited to, any one of the following:

(A) sworn statements from two people, willing to testify before the board, the medical board, or the State Office of Administrative Hearings that the person subject to the Act is impaired ;

(B) evidence that a person subject to the Act left a treatment program for alcohol or chemical dependency before completion of that program;

(C) evidence that a person subject to the Act is guilty of intemperate use of drugs or alcohol;

(D) evidence of repeated arrests of a person subject to the Act for intoxication;

(E) evidence of recurring temporary commitments of a person subject to the Act to a mental institution;

(F) medical records indicating that a person subject to the Act has an illness or condition which results in the inability to function properly in his or her practice; or

(G) actions or statements by a person subject to the Act at a hearing conducted by the Board that gives the Board reason to believe that the person has an impairment.

(3) Upon presentation to the Executive Director of probable cause, the board authorizes the Executive Director to write the person requesting that he or she submit to a physical or mental examination within 30 days of the receipt of the letter from the Executive Director. The letter shall state the reasons for the request for the mental or physical examination, the physician or physicians the Executive Director has approved to conduct such examinations, and the date by which the examination and the results are to be received by the Board.

(4) If the person to whom a letter requiring a mental or physical examination is sent refuses to submit to the examination, the board, through its Executive Director, shall issue an order requiring the person to show cause why he or she should not be required to submit to the examination and shall schedule a hearing on the order not later than the 30 days after the date on which the notice of the hearing is provided to the person. The person shall be notified by either personal service or certified mail with return receipt requested.

(5) At the show cause hearing provided in for in paragraph (4) of this subsection, a panel of the board's representatives shall determine whether the person shall submit to an evaluation or that the matter shall be closed with no examination required.

(A) At the hearing, the person and his or her attorney, if any, are entitled to present testimony and other evidence showing that he or she should not be required to submit to the examination.

(B) If, after consideration of the evidence presented at the show cause hearing, the panel determines that the person shall submit to an examination, the board's representatives shall, through the Executive Director, issue an order requiring the examination within 60 days after the date of the entry of the order requiring examination. The individual is entitled to cross-examine an expert who offers testimony at hearing before the board.

(C) If the panel determines that no such examination is necessary, the panel will withdraw the request for examination.

(D) The results of any board-ordered mental or physical examination are confidential shall be presented to the board under seal for it to take whatever action is deemed necessary and appropriate based on the results of the mental or physical examination. The individual required to take the examination shall be provided the results of an examination and given the opportunity to provide a response at least 30 days before the board takes action.

(6) In fulfilling its obligations under §601.052 of the Act, the board shall refer the affected individual to the most appropriate medical specialist for evaluation. The board may not require a person to submit to an examination by a physician having a specialty specified by the board unless medically indicated. The board may not require an individual to submit to an examination to be conducted an unreasonable distance from the person's home or place of business unless he or she resides and works in an area in which there are a limited number of physicians able to perform an appropriate examination.

(7) The guidelines adopted under this subsection do not impair or remove the board's power to make an independent certification, registration, permitting, or disciplinary decision unless a temporary suspension is convened.

(b) Chapter 180 of this title (relating to Texas Physician Health Program and Rehabilitation Orders) shall be applied to individuals subject to the Act and who are believed to be impaired and eligible for the Texas Physician Health Program.

§194.31. Third Party Reports to the Board.

(a) Any individual regulated by the Act shall report relevant information to the board related to the acts of any certificate, registration, or permit holder issued under the Act and practicing in this state if, in the opinion of the person that the certificate, registration, or permit holder poses a continuing threat to the public welfare through his or her practice in radiologic technology. The duty to report under this section shall not be nullified through contract.

(b) Reporting a Continuing Threat to the Public.

(1) Relevant information shall be reported to the board indicating that an individual who is regulated by the Act poses a continuing threat to the public welfare and shall include a narrative statement describing the time, date, and place of the acts or omissions on which the report is based.

(2) A report that an individuals practice of radiologic technology constitutes a continuing threat to the public welfare shall be made to the board as soon as possible after the individual involved reaches that conclusion and is able to assemble the relevant information.

(c) Reporting Professional Liability Claims.

(1) Reporting responsibilities. The reporting form must be completed and forwarded to the board for each defendant who is regulated by the Act and against whom a professional liability claim or complaint has been filed. The information is to be reported by insurers or other entities providing professional liability insurance for the individual. If a nonadmitted insurance carrier does not report or if the individual has no insurance carrier, reporting shall be the responsibility of the regulated individual.

(2) Separate reports required and identifying information. One separate report shall be filed for each defendant insured. When Part II is filed, it shall be accompanied by the completed Part I or other identifying information as described in paragraph (4)(A) of this subsection.

(3) Time frames and attachments. The information in Part I of the form must be provided within 30 days of receipt of the claim or suit. A copy of the claim letter or petition must be attached. The information in Part II must be reported within 105 days after disposition of the claim. Disposed claims shall be defined as those claims where a court order has been entered, a settlement agreement has been reached, or the complaint has been dropped or dismissed.

(4) Alternate reporting formats. The information may be reported either on the form provided or in any other legible format which contains at least the requested data.

(A) If the reporter elects to use a reporting format other than the board's form for data required in Part II, there must be enough identification data available to staff to match the closure report to the original file. The data required to accomplish this include:

(i) name and certificate, registration, or permit number of defendant(s); and

(ii) name of plaintiff.

(B) A court order or a copy of the settlement agreement is an acceptable alternative submission for Part II. An order or settlement agreement should contain the necessary information to match the closure information to the original file. If the order or agreement is lacking some of the required data, the additional information may be legibly written on the order or agreement.

(5) Penalty. Failure by a licensed insurer to report under this section shall be referred to the Texas Department of Insurance.

(6) Definition. For the purposes of this subsection, a professional liability claim or complaint shall be defined as a cause of action against a person subject to the Act for treatment, lack of treatment, or other claimed departure from accepted standards of health care or safety which proximately results in injury to or death of the patient, whether the patient's claim or cause of action sounds in tort or contract.

(7) Claims not required to be reported. Examples of claims that are not required to be reported under this chapter but which may be reported include, but are not limited to, the following:

(A) product liability claims (i.e. where an individual subject to the Act invented a device which may have injured a patient but the individual has had no personal interaction with the specific patient claiming injury by the device);

(B) antitrust allegations;

(C) allegations involving improper peer review activities;

(D) civil rights violations; or

(8) Voluntary Reporting. Claims that are not required to be reported under this chapter may, however, be voluntarily reported.

(9) Reporting Form. The reporting form shall be as follows:

Figure: 22 TAC §194.31(c)(9)

(10) Professional Liability Suits and Claims. Following receipt of a notice of claim letter or a complaint filed in court against a individual subject to the Act that is reported to the board, the individual shall furnish to the board the following information within 14 days of the date of receipt of the board's request for said information:

(A) a completed questionnaire to provide summary information concerning the suit or claim;

(B) a completed questionnaire to provide information deemed necessary in assessing the individual's competency;

(C) information on the status of any suit or claim previously reported to either the board or the medical board.

(d) Immunity and Reporting Requirements. A person, health care entity, medical peer review committee, or other entity that without malice furnishes records, information, or assistance to the board is immune from any civil liability arising from such act.

§194.32. Duty to Report Certain Conduct to the Board.

A certificate, registration, or permit holder shall report the following to the board within 30 days after the event:

(1) Any change of address;

(2) Incarceration in a state or federal penitentiary;

(3) An initial conviction, final conviction, or placement on deferred adjudication, community supervision, or deferred disposition for:

(A) a felony;

(B) a misdemeanor that directly relates to the directly relates to the duties and responsibilities of a MRT, LMRT or NCT;

(C) a misdemeanor involving moral turpitude;

(D) a misdemeanor under Chapter 22, Penal Code (relating to assaultive offenses), other than a misdemeanor punishable by fine only;

(E) a misdemeanor on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;

(F) a misdemeanor under §25.07, Penal Code (relating to the violation of a protective order or a magistrate's order); or

(G) a misdemeanor under §25.071, Penal Code (relating to the violation of a protective order preventing offenses caused by bias or prejudice); or

(4) An initial finding by the trier of fact of guilt of a felony under:

(A) Chapter 481 or 483, Health and Safety Code (relating to offenses involving controlled substances and dangerous drugs);

(B) Section 485.033, Health and Safety Code (relating to offenses involving inhalant paraphernalia); or

(C) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. §801 et seq.)

§194.33. Voluntary Relinquishment or Surrender of Certificate or Permit

Pursuant to §601.305 of the Act, the board may accept the voluntary relinquishment or surrender of a certificate or permit. Chapter 196 of this title (relating to Voluntary Relinquishment or Surrender of a Medical License) shall govern the voluntary relinquishment or surrender of a certificate or permit in a similar manner as that chapter applies to a medical license. Section 194.6 of this chapter (relating to Procedural Rules and Minimum Eligibility Requirements for Applicants for a Certificate or Placement on the Board's Non-Certified Technician General Registry) shall govern reapplication after a voluntary relinquishment or surrender.

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

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Mari Robinson, J.D.
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Texas Medical Board
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SUBCHAPTER B. NON-CERTIFIED TECHNICIANS SUPERVISED BY PHYSICIANS

22 TAC §§194.34 - 194.43

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §601.052, which provide authority for the MRT Board to adopt rules as necessary to: regulate the practice of medical radiologic technology; enforce the requirements set forth by, and perform its duties under Chapter 601 of the Texas Occupations Code.

No other statutes, articles or codes are affected by this proposal.

§194.34. Purpose.

The purpose of these rules is to implement the provisions of the Medical Radiologic Technologist Certification Act, Texas Occupations Code Chapter 601 ("the Act") applicable to non-certified radiologic technicians or non-certified technicians.

§194.35. Definitions.

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

(1) Board--The Texas Medical Board.

(2) Non-certified technician (NCT) or registrant--A person who is registered with the board and either:

(A) is listed on the current registry with the Texas Department of State Health Services and meets one of the following qualifications listed in clauses (i) and (ii) of this subparagraph;

(i) has completed a mandatory training program under 25 Texas Administrative Code, §140.518 (relating to Mandatory Training Programs for Non-Certified Technicians); or

(ii) if the person is licensed as a physician assistant in the State of Texas, has completed a mandatory training program under 25 Texas Administrative Code, §140.518 or has met the alternate training requirements under 25 Texas Administrative Code, §140.522 (relating to Alternate Training Requirements); or

(B) performs radiologic procedures for a physician to whom a hardship exemption was granted by the Texas Department of State Health Services within the previous year, as defined in 25 Texas Administrative Code, §140.520 (relating to Hardship Exemptions).

(3) Supervision--Responsibility for and control of quality, radiation safety and protection, and technical aspects of the application of ionizing radiation to human beings for diagnostic purposes.

§194.36. Registration.

(a) Any person in the State of Texas performing radiologic procedures, as defined in §194.5 of this title (relating to Non-Certified Technician's Scope of Practice), under the supervision of a current and active licensed Texas physician, must be registered with the Texas Medical Board. The physician must also be registered with the board to supervise the non-certified technician.

(b) This section does not apply to registered nurses or to persons certified by the Department of State Health Services under the Medical Radiologic Technologist Certification Act.

(c) An applicant shall apply for registration with the board on a form provided by the board and shall pay the appropriate fee established by the board. Each physician, who supervises a non-certified technician, shall apply on a separate application form.

(d) Applicants shall be 18 years of age or older and either:

(1) provide proof of the applicant's registry with the Texas Department of State Health Services and meet one of the following qualifications listed in subparagraphs (A) and (B) of this paragraph:

(A) receive training and instruction as required in 25 Texas Administrative Code, §140.518 (relating to Mandatory Training Programs for Non-Certified Technicians); or

(B) if licensed as a physician assistant, receive training and instruction as required in 25 Texas Administrative Code, §140.518 or meet the alternate training requirements in 25 Texas Administrative Code, §140.522 (relating to Alternate Training Requirements); or

(2) perform radiologic procedures for a physician to whom a hardship exemption was granted by the Texas Department of State

Health Services within the previous year under 25 Texas Administrative Code, §140.520 (relating to Hardship Exemptions). A person who operates a bone densitometry unit(s) which utilizes x-radiation who is in compliance with 25 Texas Administrative Code §140.521 (relating to Bone Densitometry Training), however, is not required to obtain a hardship exemption as long as the person is not performing radiologic procedures other than bone densitometry.

§194.37. Annual Renewal.

(a) Registrants shall renew the registration annually by:

(1) submitting a completed registration application;

(2) paying a fee, as specified by the board under Chapter 175 (relating to Fees and Penalties); and

(3) providing proof of the registrant's renewal of status on the Texas Department of State Health Services registry or that the registrant is working under a physician hardship exemption, if applicable.

(b) If the registrant fails to comply with subsection (a) of this section on or before the expiration date of the registration, the following penalties as shown in paragraphs (1) and (2) of this subsection will be imposed:

(1) one to 90 days late--penalty fee set under §175.3(4) of this title (relating to Penalties);

(2) over 90 days late the registrant may not renew his or her registration, and the registration will be considered expired, unless an investigation is pending. The registrant must submit a new application and comply with the requirements and procedures for obtaining a permit.

(c) The board by rule may adopt a system under which registrations expire on various dates during the year. For the year in which the expiration date is changed, registration fees payable on or before January 1 shall be prorated on a monthly basis so that each registrant shall pay only that portion of the registration fee which is allocable to the number of months during which the registration is valid. On renewal of the registration on the new expiration date, the total registration is payable.

(d) Registrants shall inform the board in writing of address changes within two weeks.

§194.38. Non-Certified Technician's Scope of Practice.

(a) A registrant may only perform the following radiologic procedures, as listed in paragraphs (1) and (2) of this subsection unless otherwise expressly permitted by statute or rule:

(1) bone densitometry utilizing a dual energy x-ray densitometer; or

(2) chest, spine, extremities, abdomen, skull studies or other radiologic procedures utilizing standard film or film screen combinations and an x-ray tube that is stationary at the time of exposure; however, a registrant may not perform a procedure which has been identified as dangerous or hazardous by the Texas Department of State Health Services in 25 TAC §140.516 relating to (Dangerous or Hazardous Procedures).

(b) A registrant, other than a physician assistant, shall perform all radiologic procedures under the direct supervision or instruction of a physician in the State of Texas.

(c) A supervising physician may not order, instruct, or direct a registrant to perform a radiologic procedure other than in compliance with applicable statutes and rules.

(d) All registrants must comply with the safety rules of the Texas Department of State Health Services relating to the control of radiation as set forth in 25 TAC Chapter 289 (relating to Radiation Control)

§194.39. Suspension, Revocation or Nonrenewal of Registration.

(a) The board may refuse to issue a registration to an applicant and may, following notice of hearing and a hearing as provided for in the Administrative Procedure Act, take disciplinary action against any non-certified technician who:

(1) violates the Medical Practice Act, the rules of the Texas Medical Board, an order of the board previously entered in a disciplinary proceeding, or an order to comply with a subpoena issued by the board;

(2) violates the Medical Radiologic Technologist Certification Act or the rules promulgated by the Texas Department of State Health Services;

(3) violates the rules of the Texas Department of State Health Services for control of radiation;

(4) obtains, attempts to obtain, or uses a registration by bribery or fraud;

(5) engages in unprofessional conduct, including, but not limited to, conviction of a crime, commission of any act that is in violation of the laws of the State of Texas if the act is connected with provision of health care, and commission of an act of moral turpitude;

(6) develops or has an incapacity that prevents the practice of radiologic technology with reasonable skill, competence, and safety to the public as a result of:

(A) an illness;

(B) drug or alcohol dependency; or habitual use of drugs or intoxicating liquors; or

(C) another physical or mental condition;

(7) fails to practice as a non-certified technician in an acceptable manner consistent with public health and welfare;

(8) has disciplinary action taken against a certification, permit, or registration in another state, territory, or country or by another regulatory agency;

(9) engages in acts requiring registration under these rules without a current registration from the board; or

(10) is removed, suspended, or has had disciplinary action taken against the registrant.

(b) The board may suspend, revoke, or refuse to renew the registration of a non-certified technician, upon a finding that a non-certified technician has committed any offense listed in this section.

§194.40. Disciplinary Guidelines.

(a) Chapter 190 of this title (relating to Disciplinary Guidelines) shall apply to certificate holders, registrants, and permit holders regulated under this chapter to be used as guidelines for the following areas as they relate to the denial of registration or disciplinary action taken against a registrant:

(1) practice inconsistent with public health and welfare;

(2) unprofessional and dishonorable conduct; and

(3) aggravating and mitigating factors.

(b) If the provisions of Chapter 190 of this title conflict with the rules under this chapter or the Medical Radiological Technologist Act, the provisions of this chapter and the Act shall control.

§194.41. Procedure.

Chapter 187 of this title (relating to Procedural Rules) shall govern procedures relating to registrants where applicable. If the provisions of Chapter 187 of this title conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

§194.42. Compliance.

Chapter 189 of this title (relating to Compliance Program) shall be applied to registrants who are under board orders. If the provisions of Chapter 189 of this title conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

§194.43. Construction.

The provisions of this chapter shall be construed and interpreted so as to be consistent with the statutory provisions of the Medical Practice Act. In the event of a conflict between this chapter and the provisions of the Medical Practice Act, the provisions of the Medical Practice Act shall control; however, this chapter shall be construed so that all other provisions of this chapter which are not in conflict with the Act shall remain in effect.

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

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Texas Medical Board
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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER P. ENTERPRISE RESOURCE PLANNING

34 TAC §5.302

The Comptroller of Public Accounts proposes new §5.302, regarding state agency reporting of contracting information. This new section will be under Chapter 5, Funds Management (Fiscal Affairs), Subchapter P, Enterprise Resource Planning.

New §5.302 sets forth the contracting information that state agencies must provide using the centralized accounting payroll and personnel system, or any successor system used to implement the enterprise resource planning component of the uniform statewide accounting project, developed under Government Code, §2101.035 and §2101.036.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying procedures for individual agencies to report contract information. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Rob Coleman, Director, Fiscal Management Division, at rob.coleman@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The new section is proposed under Government Code, §2101.041, which requires the comptroller by rule to determine the contracting information that state agencies must provide using the centralized accounting payroll and personnel system, or any successor system used to implement the enterprise resource planning component of the uniform statewide accounting project, developed under Government Code, §2101.035 and §2101.036.

This section implements Government Code, §2101.041.

§5.302. State Agency Reporting of Contracting Information.

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

(1) State agency--Has the meaning assigned by Government Code, §403.013(a) but does not include public junior colleges or community colleges.

(2) CAPPS--The centralized accounting and payroll personnel system, or any successor system used to implement the enterprise resource planning component of the uniform statewide accounting project, developed under Government Code, §2101.035 and §2101.036.

(b) A state agency using CAPPS shall provide to the comptroller the following contract and purchasing information for each contract entered into by the state agency:

(1) a brief summary of each contract that is quickly and easily searchable, including the contract's purpose, timeline, and deliverables;

(2) contract planning and solicitation documents;

(3) the criteria used to determine the vendor awarded the contract;

(4) if the contract was awarded based on best value to the state:

(A) a list of the factors considered in determining best value with the weight given each factor; and

(B) a statement regarding how the vendor awarded the contract provides the best value to the state in relation to other vendors who bid or otherwise responded to the contract solicitation;

(5) any statements of work and work orders prepared for or under the contract;

(6) the proposed budget for the contract;

(7) any conflict of interest documents signed by state agency purchasing personnel participating in the planning, soliciting, or monitoring of the contract;

(8) criteria used or to be used by the state agency in monitoring the contract and vendor performance under the contract;

(9) a justification for each change order, contract amendment, contract renewal or extension, or other proposed action that would result in an increase in the monetary value of a contract with an initial value exceeding $10 million;

(10) additional supporting documentation and justification for a change order, contract amendment, contract renewal or extension, or other proposed action of a contract described by paragraph (9) of this subsection that would result in an increase in the contract's monetary value by more than 20%; and

(11) any additional contract and purchasing information required by the comptroller.

(c) The information required under subsection (b) of this section shall be provided to the comptroller:

(1) using CAPPS; and

(2) in accordance with these rules and comptroller policies and procedures.

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

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Lita Gonzalez
General Counsel
Comptroller of Public Accounts
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CHAPTER 20. TEXAS PROCUREMENT AND SUPPORT SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

34 TAC §20.1, §20.2

The Comptroller of Public Accounts proposes the repeal of §20.1, concerning purpose of Texas procurement and support services, and §20.2, concerning Texas procurement and support services business location and mailing address.

The comptroller proposes to repeal these sections as part of the reorganization of the entire chapter regarding statewide procurement and support services. Along with the proposed repeal of the rules, the comptroller will propose new sections in Subchapter A which will be organized in new Division 1, Administration and Division 2, Definitions.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the repeals will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the comptroller's procedures for statewide procurement and support services. The proposed repeals would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed repeals.

Comments on the repeals may be submitted to Amy Comeaux, Statewide Procurement Division, at amy.comeaux@cpa.texas.gov or at P.O. Box 13528 Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposals in the *Texas Register.*

The repeals are proposed under Government Code, §2155.0012 and §2156.0012.

The repeals affect Government Code, Title 10, Subtitle D, §§2151.004, 2155.0012, and 2156.0012.

§20.1. Purpose of Texas Procurement and Support Services.

§20.2. Texas Procurement and Support Services Business Location and Mailing Address.

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

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SUBCHAPTER B. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

34 TAC §§20.10 - 20.28

The Comptroller of Public Accounts proposes the repeal of §20.10, concerning policy and purpose; §20.11, concerning definition; §20.12, concerning evaluation of active participation in the control, operation, and management of entities; §20.13, concerning statewide annual HUB utilization goals; §20.14, concerning subcontracts; §20.15, concerning agency planning responsibilities; §20.16, concerning state agency reporting requirements; 20.17, concerning certification process; §20.18, concerning protests; §20.19, concerning recertification; §20.20, concerning revocation; §20.21, concerning certification and compliance reviews; §20.22, concerning Texas historically underutilized business certification directory; §20.23, concerning graduation procedures; §20.24, concerning program review; §20.25, concerning memorandum of understanding between the governor's division of economic development and tourism and the comptroller; §20.26, concerning HUB coordinator responsibilities; §20.27, concerning HUB forum programs for state agencies; and §20.28, concerning mentor-protégé program.

The comptroller proposes to repeal these sections as part of the reorganization of the entire chapter regarding statewide procurement and support services. Along with the proposed repeal of the rules, the comptroller will propose new sections in Subchapter B, renamed Public Procurement Authority and Organization, which will be organized into Division 1, Primary and

Delegated Procurement Authority, Division 2, Publicizing Procurement: CMBL, ESBD, and VPTS, Division 3, Contract Management Guide and Training, and Division 4, Improper Business Practices and Personal Conflicts of Interest.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the repeals will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the comptroller's procedures for statewide procurement and support services. The proposed repeals would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed repeals.

Comments on the repeals may be submitted to Amy Comeaux, Statewide Procurement Division, at amy.comeaux@cpa.texas.gov or at P.O. Box 13528 Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposals in the *Texas Register*.

The repeals are proposed under Government Code, §2161.0012 and §2161.002(c).

The repeals affect Government Code, Chapter 2161, §§2161.0011, 2161.002, 2161.0015, 2161.004, 2161.061, 2161.062, 2161.065, 2161.181, and 2161.252.

§20.10. Policy and Purpose.

§20.11. Definitions.

§20.12. Evaluation of Active Participation in the Control, Operation, and Management of Entities.

§20.13. Statewide Annual HUB Utilization Goals.

§20.14. Subcontracts.

§20.15. Agency Planning Responsibilities.

§20.16. State Agency Reporting Requirements.

§20.17. Certification Process.

§20.18. Protests.

§20.19. Recertification.

§20.20. Revocation.

§20.21. Certification and Compliance Reviews.

§20.22. Texas Historically Underutilized Business Certification Directory.

§20.23. Graduation Procedures.

§20.24. Program Review.

§20.25. Memorandum of Understanding between the Governor's Division of Economic Development and Tourism and the Comptroller.

§20.26. HUB Coordinator Responsibilities.

§20.27. HUB Forum Programs for State Agencies.

§20.28. Mentor-Protégé Program.

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

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SUBCHAPTER C. PROCUREMENT

34 TAC §§20.31 - 20.41, 20.43, 20.46 - 20.52, 20.55, 20.63, 20.64, 20.71, 20.72, 20.74 - 20.76, 20.81, 20.85, 20.87, 20.101 - 20.108, 20.125, 20.126, 20.135, 20.148, 20.201 - 20.217

The Comptroller of Public Accounts proposes the repeal of §20.31, concerning general purchasing provisions; §20.32, concerning definitions; §20.33, concerning requisitions and specifications; proprietary purchases; lease purchases; §20.34, concerning centralized master bidders list; §20.35, concerning bid submission, bid opening, and tabulation; §20.36, concerning bid evaluation and award; §20.37, concerning competitive sealed proposals; §20.38, concerning preferences; §20.39, concerning contract administration; §20.40, concerning term contracts; §20.41, concerning delegated purchases; §20.43, concerning Texas department of criminal justice purchases; §20.46, concerning multiple award contract procedure; §20.47, concerning multiple award schedule; §20.48, concerning auditing of purchase related documentation; §20.49, concerning catalog information systems vendor; §20.50, concerning group purchasing programs; §20.51, concerning reverse auction; §20.52, concerning advisory committees; §20.55, concerning purchase of motor vehicles; §20.63, concerning selection of items for development of Texas uniform standards and specifications; §20.64, concerning development of Texas uniform standards and specifications; §20.71, concerning general; §20.72, concerning inspection and/or testing; §20.74, concerning testing facilities and/or laboratories; §20.75, concerning cost of testing; §20.76, concerning assessing and collecting damages and testing costs; §20.81, concerning general; §20.85, concerning participation in cooperative purchasing; §20.87, concerning responsibilities of qualified ordering entities; §20.101, concerning purpose and applicability; §20.102, concerning definitions; §20.103, concerning protecting the state's interest: failure to meet specifications; §20.104, concerning protecting the state's interest: failure to meet contract requirements; §20.105, concerning debarment; §20.106, concerning procedures for investigations and debarment; §20.107, concerning request for review; §20.108, vendor performance tracking system; §20.125, concerning buying under contract established by an agency other than commission; §20.126, concerning purchasing from interstate compacts and cooperative agreements; §20.135, concerning state agency procurements of recycled, remanufactured or environmentally sensitive commodities or services; §20.148, concerning purchase price of commemorative items; §20.201, concerning authority; §20.202, concerning purpose; §20.203, concerning definitions; §20.204, concerning notice and information posting requirements; §20.205, concerning internet access; §20.206, concerning fees; §20.207, concerning posting time requirements; §20.208, concerning emergency procurements; §20.209, concerning internal repair procurements; §20.210, concerning multiple award schedule

contract purchases exceeding $25,000; §20.211, concerning registered agent requirements; §20.212, concerning procurement opportunity posting procedures; §20.213, concerning posting follow-up and record keeping; §20.214, concerning contract award; §20.215, concerning award notification; §20.216, concerning verification of compliance; and §20.217, concerning exceptions and exclusions.

The comptroller proposes to repeal these sections as part of the reorganization of the entire chapter regarding statewide procurement and support services. Along with the proposed repeal of the rules, the comptroller will propose new provisions in Subchapter C, renamed Procurement Methods and Contract Formation, which will be organized in Division 1, Procurement Planning, Division 2, Procurement Methods, and Division 3, Special Contracting Methods.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the repeals will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the comptroller's procedures for statewide procurement and support services. The proposed repeals would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed repeals.

Comments on the repeals may be submitted to Amy Comeaux, Statewide Procurement Division, at amy.comeaux@cpa.texas.gov or at P.O. Box 13528 Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposals in the *Texas Register*.

The repeals are proposed under Education Code, §34.001, Government Code, §§2155.0012, 2155.083, 2115.087, 2155.503, 2156.0012, 2156.005, 2158.0012, and 2172.0012, and Local Government Code, §271.082.

The repeals affect Government Code Chapters 2155, 2156, and 2161, Education Code Chapter 34, Subchapter A, Health and Safety Code §361.609 and §386.001, and Government Code §§2152.003, 2155.070, 2155.074, 2155.075, 2155.077, 2155.079, 2155.132, 2155.449, 2155.502, 2156.007, 2157.003, 2157.125, 2172.003, and 2172.006.

§20.31. General Purchasing Provisions.

§20.32. Definitions.

§20.33. Requisitions and Specifications; Proprietary Purchases; Lease Purchases.

§20.34. Centralized Master Bidders List.

§20.35. Bid Submission, Bid Opening, and Tabulation.

§20.36. Bid Evaluation and Award.

§20.37. Competitive Sealed Proposals.

§20.38. Preferences.

§20.39. Contract Administration.

§20.40. Term Contracts.

§20.41. Delegated Purchases.

§20.43. Texas Department of Criminal Justice Purchases.

§20.46. Multiple Award Contract Procedure.

§20.47. Multiple Award Schedule.

§20.48. Auditing of Purchase Related Documentation.

§20.49. Catalog Information Systems Vendor.

§20.50. Group Purchasing Programs.

§20.51. Reverse Auction.

§20.52. Advisory Committees.

§20.55. Purchase of Motor Vehicles.

§20.63. Selection of Items for Development of Texas Uniform Standards and Specifications.

§20.64. Development of Texas Uniform Standards and Specifications.

§20.71. General.

§20.72. Inspection and/or Testing.

§20.74. Testing Facilities and/or Laboratories.

§20.75. Cost of Testing.

§20.76. Assessing and Collecting Damages and Testing Costs.

§20.81. General.

§20.85. Participation in Cooperative Purchasing.

§20.87. Responsibilities of Qualified Ordering Entities.

§20.101. Purpose and Applicability.

§20.102. Definitions.

§20.103. Protecting the State's Interest: Failure to Meet Specifications.

§20.104. Protecting the State's Interest: Failure to Meet Contract Requirements.

§20.105. Debarment.

§20.106. Procedures for Investigations and Debarment.

§20.107. Request for Review.

§20.108. Vendor Performance Tracking System.

§20.125. Buying under Contract Established by an Agency other Than Commission.

§20.126. Purchasing from Interstate Compacts and Cooperative Agreements.

§20.135. State Agency Procurements of Recycled, Remanufactured or Environmentally Sensitive Commodities or Services.

§20.148. Purchase Price of Commemorative Items.

§20.201. Authority.

§20.202. Purpose.

§20.203. Definitions.

§20.204. Notice and Information Posting Requirements.

§20.205. Internet Access.

§20.206. Fees.

§20.207. Posting Time Requirements.

§20.208. Emergency Procurements.

§20.209. Internal Repair Procurements.

§20.210. Multiple Award Schedule Contract Purchases Exceeding $25,000.

§20.211. Registered Agent Requirements.

§20.212 Procurement Opportunity Posting Procedures.

§20.213. Posting Follow-up and Record Keeping.

§20.214. Contract Award.

§20.215. Award Notification.

§20.216. Verification of Compliance.

§20.217. Exceptions and Exclusions.

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

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Lita Gonzalez
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SUBCHAPTER D. PAYMENTS

34 TAC §§20.221, 20.223, 20.225, 20.227, 20.229, 20.230

The Comptroller of Public Accounts proposes the repeal of §20.221, concerning definitions; §20.223, concerning exceptions to prompt pay process; §20.225, concerning invoicing standards; §20.227, concerning payments; §20.229, concerning disputed payments; and §20.230, concerning collection of debts.

The comptroller proposes to repeal these sections as part of the reorganization of the entire chapter regarding statewide procurement and support services. Along with the proposed repeal of the rules, the comptroller will propose new sections in Subchapter D, renamed Socio-Economic Program, which will be organized in Division 1, Historically Underutilized Businesses and Division 2, Environment, Energy and Water Efficiency, and Renewable Energy Technologies.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the repeals will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the comptroller's procedures for statewide procurement and support services. The proposed repeals would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed repeals.

Comments on the repeals may be submitted to Amy Comeaux, Statewide Procurement Division, at amy.comeaux@cpa.texas.gov or at P.O. Box 13528 Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposals in the *Texas Register*.

The repeals are proposed under Government Code, §2251.003.

The repeals affect Government Code, Title 10, Subtitle F, Chapter 2251.

§20.221. Definitions.

§20.223. Exceptions to Prompt Pay Process.

§20.225. Invoicing Standards.

§20.227. Payments.

§20.229. Disputed Payments.

§20.230. Collection of Debts.

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

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SUBCHAPTER E. STATE SUPPORT SERVICES--MAIL AND PRINTING

34 TAC §20.231, §20.261

The Comptroller of Public Accounts proposes the repeal of §20.231, concerning mail and messenger services and §20.261, concerning printing.

The comptroller proposes to repeal these sections as part of the reorganization of the entire chapter regarding statewide procurement and support services. Along with the proposed repeal of the rules, the comptroller will propose new sections in Subchapter E, renamed Special Categories of Contracting, and which will be organized in Division 1, State Support Services--Mail and Printing, Division 2, State Support Services--Travel And Vehicles, Division 3, State Support Services--Vehicle Fleet Management, Division 4, Uniform Grant And Contract Standards, and Division 5, Commemorative Items.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the repeals will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the comptroller's procedures for statewide procurement and support services. The proposed repeals would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed repeals.

Comments on the repeals may be submitted to Amy Comeaux, Statewide Procurement Division, at amy.comeaux@cpa.texas.gov or at P.O. Box 13528 Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposals in the *Texas Register.*

The repeals are proposed under Government Code, §§2113.103, 2155.0012, 2156.0012, 2171.002, 2171.055, 2172.0012, and 2176.110.

The repeals affect Government Code, Chapters 2155, 2156, 2171, 2172, and 2176 and Government Code, §2113.103.

§20.231. Mail and Messenger Services.

§20.261. Printing.

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

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SUBCHAPTER F. STATE SUPPORT SERVICES--TRAVEL AND VEHICLES

34 TAC §§20.301 - 20.308, 20.340 - 20.343, 20.345, 20.349, 20.363, 20.365, 20.367, 20.369

The Comptroller of Public Accounts proposes the repeal of §20.301, concerning purpose and applicability; §20.302, concerning definitions; §20.303, concerning exceptions to the use of contract travel services; §20.304, concerning state agency contracts and requests for exceptions; §20.305, concerning state agency travel coordinators; §20.306, concerning state agency reimbursement and reporting; §20.307, concerning procuring travel agency and other travel related services; §20.308, concerning state travel credit cards; §20.340, concerning definitions; §20.341, concerning office of vehicle fleet management; §20.342, concerning state vehicle fleet management plan; §20.343, concerning assignment and use of pooled vehicles; §20.345, concerning vehicle fleet management system; §20.349, concerning vehicle use report; §20.363, concerning assistance to state agencies and school districts; §20.365, concerning waiver of vehicles to meet required fleet percentages; §20.367, concerning effect of waiver; and §20.369, concerning alternative fuel usage.

The comptroller proposes to repeal these sections as part of the reorganization of the entire chapter regarding statewide procurement and support services. Along with the proposed repeal of the rules, the comptroller will propose new sections in Subchapter F, renamed Contract Management, and which will be organized in Division 1 Contract Administration, Division 2, Reports and Audits, Division 3, Protests and Appeals, and Division 4, Contract Disputes.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the repeals will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the comptroller's procedures for statewide procurement and support services. The proposed repeals would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed repeals.

Comments on the repeals may be submitted to Amy Comeaux, Statewide Procurement Division, at amy.comeaux@cpa.texas.gov or at P.O. Box 13528 Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposals in the *Texas Register.*

The repeals are proposed under Government Code, §§403.023, 2155.0012, 2156.0012, and 2171.002.

The repeals affect Government Code, §§2171.002, 2171.054, 2171.056, 2171.104, and 2171.1045.

§20.301. Purpose and Applicability.
§20.302. Definitions.
§20.303. Exceptions to the Use of Contract Travel Services.
§20.304. State Agency Contracts and Requests for Exceptions.
§20.305. State Agency Travel Coordinators.
§20.306. State Agency Reimbursement and Reporting.
§20.307. Procuring Travel Agency and Other Travel Related Services.
§20.308. State Travel Credit Cards.
§20.340. Definitions.
§20.341. Office of Vehicle Fleet Management.
§20.342. State Vehicle Fleet Management Plan.
§20.343. Assignment and Use of Pooled Vehicles.
§20.345. Vehicle Fleet Management System.
§20.349. Vehicle Use Report.
§20.363. Assistance to State Agencies and School Districts.
§20.365. Waiver of Vehicles to Meet Required Fleet Percentages.
§20.367. Effect of Waiver.
§20.369. Alternative Fuel Usage.

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

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SUBCHAPTER G. CONTRACT PROCEDURES

34 TAC §§20.381 - 20.386

The Comptroller of Public Accounts proposes the repeal of §20.381, concerning purpose; §20.382, concerning application; §20.383, concerning open meetings for certain contract awards; §20.384, concerning protests; §20.385, concerning negotiation and mediation of contract disputes; and §20.386, concerning statewide procurement advisory council.

The comptroller proposes to repeal these sections as part of the reorganization of the entire chapter regarding statewide procurement and support services. Along with the proposed repeal of the rules, the comptroller will propose new sections in Subchapter G, renamed Debarment.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the repeals will be in effect, there will

be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the comptroller's procedures for statewide procurement and support services. The proposed repeals would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed repeals.

Comments on the repeals may be submitted to Amy Comeaux, Statewide Procurement Division, at amy.comeaux@cpa.texas.gov or at P.O. Box 13528 Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposals in the *Texas Register.*

The repeals are proposed under Government Code, §§2155.0012, 2155.076, 2155.087, 2156.0012, 2170.0012, and 2260.052(c).

The repeals affect Government Code, §§2110.005, 2155.003, 2155.004, 2155.0011, 2155.0012, 2155.086, 2155.087, 2170.0011, 2260.051, 2260.052, 2260.053, 2260.054, 2260.055, and 2260.056.

§20.381. Purpose.

§20.382. Application.

§20.383. Open Meetings for Certain Contract Awards.

§20.384. Protests.

§20.385. Negotiation and Mediation of Contract Disputes.

§20.386. Statewide Procurement Advisory Council.

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

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SUBCHAPTER H. PURCHASE METHODS

34 TAC §20.391

The Comptroller of Public Accounts proposes the repeal of §20.391, concerning request for offers purchase method.

The comptroller proposes to repeal this section as part of the reorganization of the entire chapter regarding statewide procurement and support services.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the repeal will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of enforcing the repeal will be by clarifying the comptroller's procedures for statewide procurement and support services. The proposed repeal would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed repeal.

Comments on the repeal may be submitted to Amy Comeaux, Statewide Procurement Division, at amy.comeaux@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposals in the *Texas Register.*

The repeal is proposed under Government Code, §2155.0012, and §2157.0012.

The repeal affects Government Code, §§2155.003, 2155.004, 2155.0011, 2155.0012, 2157.0011, 2157.0012, 2157.003, and 2157.006.

§20.391. Request for Offers Purchase Method.

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

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SUBCHAPTER I. UNIFORM GRANT MANAGEMENT STANDARDS

34 TAC §§20.421 - 20.432

The Comptroller of Public Accounts proposes the repeal of §20.421, concerning introduction; §20.422, concerning purpose, applicability, and scope; §20.423, concerning effective date; §20.424, concerning adoption by reference; §20.425, concerning grants and contracts; §20.426, concerning standard assurances; §20.427, concerning variance from standards; §20.428, concerning obtaining copies of standards; §20.429, concerning recommendations for change; §20.430, concerning uniform cost principles and cost allocation plans; §20.431, concerning uniform administrative, accounting, reporting, and auditing standards; and 20.432, concerning state of Texas single audit circular.

The comptroller proposes to repeal these sections as part of the reorganization of the entire chapter regarding statewide procurement and support services.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the repeals will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the comptroller's procedures for statewide procurement and support services. The proposed repeals would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed repeals.

Comments on the repeals may be submitted to Amy Comeaux, Statewide Procurement Division, at amy.comeaux@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposals in the *Texas Register.*

The repeals are proposed under Government Code, §783.004 and §2155.0012.

The repeals affect Government Code, Title 7, Chapter 783.

§20.421. Introduction.

§20.422. Purpose, Applicability, and Scope.

§20.423. Effective Date.

§20.424. Adoption by Reference.

§20.425. Grants and Contracts.

§20.426. Standard Assurances.

§20.427. Variance from Standards.

§20.428. Obtaining Copies of Standards.

§20.429. Recommendations for Change.

§20.430. Uniform Cost Principles and Cost Allocation Plans.

§20.431. Uniform Administrative, Accounting, Reporting, and Auditing Standards.

§20.432. State of Texas Single Audit Circular.

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

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CHAPTER 20. STATEWIDE PROCUREMENT AND SUPPORT SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

DIVISION 1. ADMINISTRATION

34 TAC §§20.1 - 20.3

The Comptroller of Public Accounts proposes new §20.1, concerning interpretation; §20.2, concerning purposes and policies; and §20.3, concerning signed or executed documents.

The comptroller proposes to rename Chapter 20 Statewide Procurement and Support Services. New §§20.1 - 20.3 will be part of Subchapter A, under new Division 1, Administration.

New §20.1 identifies the methodology for the interpretation of the sections in the chapter.

New §20.2 identifies the goals of the chapter.

New §20.3 identifies the policy for accepting hand, electronic, or digital signatures for documents submitted as required in the chapter.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rules will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the comptroller's procedures for statewide procurement and support services. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the proposals may be submitted to Amy Comeaux, Statewide Procurement Division, at amy.comeaux@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposals in the *Texas Register.*

The new sections are proposed under Government Code, §§2155.0012, 2155.381, 2155.503, 2156.0012, 2156.010, 2156.124, 2156.126, 2161.0012, 2161.002, 2171.002, 2171.055, 2172.0012, 2176.110, 2251.003, and 783.003; Local Government Code, §271.082; and Education Code, §34.001.

The following statutes are affected by the new sections: Government Code, Chapters 2151, 2155, 2156, 2157, 2161, 2171, 2172, 2176, 2251, and 783; Local Government Code, §271.082; and Education Code, §34.001.

§20.1. Interpretation.

These rules shall be construed and applied to promote its underlying purposes and policies.

§20.2. Purposes and Policies.

The underlying purposes and policies of these rules are to:

(1) provide confidence in the procedures followed in public procurement to the public, the legislature, state agencies and vendors;

(2) provide for consistent and uniform management of procurement processes and contracts, irrespective of the procurement method used;

(3) obtain in a cost-effective and responsive manner the goods and services required by state agencies in order for those agencies to better serve Texas residents and businesses;

(4) provide safeguards for the maintenance of a procurement system of quality and integrity;

(5) provide increased economy in Texas procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds of the Texas;

(6) simplify, clarify, and modernize the law governing procurement by this state; and

(7) permit the continued development of procurement policies and practices.

§20.3. Signed or Executed Documents.

(a) In this section the following terms shall have the meaning set forth herein.

(1) Digital signature--A signature that:

(A) is created as an electronic identifier by cryptographic means involving the use of two mathematically related keys (i.e., a public and private key pair, often referred to as Public Key Infrastructure or PKI);

(B) complies with the requirements of 1 TAC Chapter 203; and

(C) is not a photographic digital facsimile of a hand-made signature.

(2) Electronic signature--A signature that is an image of a hand-made signature such as on a transmitted facsimile, an electronic document created by scanning the original physical document, or an electronic document (such as one created in a PDF) where a separate image of a hand-made signature has been overlaid onto the electronic document in place of a physical hand-made signature.

(3) Hand-made signature (also known as a wet ink or manual signature)--A signature created when a person physically marks a paper document.

(4) PDF or portable document format--A file format that provides an electronic image of text or text and graphics that looks like a printed document and can be viewed, printed, and electronically transmitted.

(5) Signature--Any symbol executed or adopted by a person with present intention to authenticate a writing.

(b) Whenever the comptroller requires a document to be signed or executed pursuant to these rules or a process created pursuant to these rules, the comptroller will accept:

(1) hand-made signatures;

(2) electronic signatures; or

(3) digital signatures.

(c) Hand-made signatures shall comply with the following requirements.

(1) A paper document must bear the valid hand-made signature of the offeror's or contractor's authorized representative.

(2) A hand-made signature is valid if the authorized representative submitting the hand-made signature is an individual who is authorized to sign the document by virtue of his or her legal status or his or her relationship to the entity on whose behalf the signature is executed.

(3) The offeror or contractor agrees that the presence of a hand-made signature on a paper document submitted to the comptroller establishes that the signatory:

(A) is in fact the authorized representative of the entity on whose behalf the signature has been executed and shall provide sufficient evidence to prove the authority to execute the document to the satisfaction of the comptroller if requested; and

(B) intended to sign the paper document and to submit it to the comptroller to fulfill the purpose of the paper document.

(d) Electronic signatures shall comply with the following requirements.

(1) An electronic document must bear the valid electronic signature of the offeror's or contractor's authorized representative if that authorized representative is required to sign the paper document for which the electronic document substitutes.

(2) An electronic signature on an electronic document is valid if it has been created through means such as facsimile transmittal, scanning of the original signed physical document, or electronic manipulation where a separate image of a hand-made signature has been overlaid onto the electronic document in place of a physical hand-made signature and the authorized representative submitting the electronic signature is an individual who is authorized to sign the document by virtue of his or her legal status or his or her relationship to the entity on whose behalf the signature is executed.

(3) The offeror or contractor agrees that its electronic signature is the legal equivalent of the offeror's or contractor's authorized representative's hand-made signature. The presence of an electronic signature on an electronic document submitted to the comptroller establishes that the signatory:

(A) is the authorized representative of the entity on whose behalf the signature has been executed and shall provide sufficient evidence to prove the authority to execute the document to the satisfaction of the comptroller if requested; and

(B) intended to sign the electronic document and to submit it to the comptroller to fulfill the purpose of the electronic document.

(4) The comptroller intends to follow the guidance of the Department of Information Resources as given by 1 TAC Chapter 203 unless otherwise noted in these rules.

(e) Digital signatures shall comply with the following requirements.

(1) When a digital signature device is used to create the offeror's or contractor's authorized representative's digital signature, the code or mechanism must be unique to that authorized representative at the time the signature is created and the authorized representative must be uniquely entitled to use it. Authorized representatives shall:

(A) protect the digital signature device from compromise; and

(B) report to the comptroller any evidence that the device has been compromised, within one calendar day of the discovery.

(2) A digital signature device is compromised if the code or mechanism is available for use by any individual other than the authorized representative.

(3) An electronic document must bear the valid digital signature of the offeror's or contractor's authorized representative if that authorized representative is required to sign the paper document for which the electronic document substitutes.

(4) A digital signature on an electronic document is valid if it has been created with an electronic signature device that the identified authorized representative is uniquely entitled to use for signing that document; the device has not been compromised; and the authorized representative is an individual who is authorized to sign the document by virtue of his or her legal status or his or her relationship to the entity on whose behalf the signature is executed.

(5) The offeror or contractor agrees that its digital signature is the legal equivalent of the offeror's or contractor's authorized repre-

sentative's hand-made signature. The presence of a digital signature on an electronic document submitted to the comptroller establishes that the authorized representative intended to sign the electronic document and to submit it to the comptroller to fulfill the purpose of the electronic document.

(6) Contractor shall use an approved provider on the list maintained by the Department of Information Resources Digital Signatures and Public Key Infrastructure (PKI) Approved Service Providers found on the DIR website.

(7) The comptroller intends to follow the guidance of the Department of Information Resources as given by 1 TAC Chapter 203 unless otherwise noted in these rules.

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

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Chief Deputy General Counsel
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DIVISION 2. DEFINITIONS

34 TAC §20.25

The Comptroller of Public Accounts proposes new §20.25, concerning definitions.

The comptroller proposes to rename Chapter 20 Statewide Procurement and Support Services. New §20.25 will be part of Subchapter A, under new Division 2, Definitions.

New §20.25 defines commonly used terms in the chapter.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the comptroller's procedures for statewide procurement and support services. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the proposal may be submitted to Amy Comeaux, Statewide Procurement Division, at amy.comeaux@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposals in the *Texas Register.*

The new section is proposed under Government Code, §§2155.0012, 2155.381, 2155.503, 2156.0012, 2156.010, 2156.124, 2156.126, 2161.0012, 2161.002, 2171.002, 2171.055, 2172.0012, 2176.110, 2251.003, and 783.003; Local Government Code, §271.082; and Education Code, §34.001.

The following statutes are affected by the new section: Government Code, Chapters 2151, 2155, 2156, 2157, 2161, 2171, 2172, 2176, 2251, and 783; Local Government Code, §271.082; and Education Code, §34.001.

§20.25. Definitions.

(a) As used throughout these regulations, words and terms defined in the State Purchasing and General Services Act, Government Code, Title 10, Subtitle D, and the Code Construction Act, Government Code, Chapter 311 shall have the same meaning as defined therein, and each word or term listed in this section shall have the meaning set forth herein, unless:

(1) its use clearly requires a different meaning; or

(2) a different definition is prescribed for a particular chapter or portion thereof.

(b) The following words and terms, when used in this section, shall have the following meaning unless the context clearly indicates otherwise.

(1) Act--The State Purchasing and General Services Act, Government Code, Title 10, Subtitle D, Chapter 2151, et seq, including any amendments thereto that may be made from time to time.

(2) Advisory groups--A group that advises and assists the standards and specification program in establishing specifications. The advisory group may include representatives from federal, state and local governments, user groups, manufacturers, vendors and distributors, bidders, associations, colleges, universities, testing laboratories, and others with expertise and specialization in particular product area.

(3) Agent of record--An employee or official designated by a qualified cooperative entity as the individual responsible to represent the qualified entity in all matters relating to the program.

(4) Approved products list--The list is also referred to as the approved brands list or qualified products list. It is a specification developed by evaluation of brands and models of various manufacturers and listing those determined to be acceptable to meet the minimum level of quality. Testing is completed in advance of procurement to determine which products comply with the specifications and standards requirements.

(5) Award--The act of accepting a bid, thereby forming a contract between the state and a bidder.

(6) Bid--An offer to contract with the state, submitted in response to a bid invitation issued by the comptroller.

(7) Bid deposit--A deposit required of bidders to protect the state in the event a low bidder attempts to withdraw its bid or otherwise fails to enter into a contract with the state. Acceptable forms of bid deposits are limited to: cashier's check, certified check, or irrevocable letter of credit issued by a financial institution subject to the laws of Texas and entered on the United States Department of the Treasury's listing of approved sureties; a surety or blanket bond from a company chartered or authorized to do business in Texas.

(8) Bidder--An individual or entity that submits a bid. The term includes anyone acting on behalf of the individual or other entity that submits a bid, such as agents, employees, and representatives.

(9) Blanket bond--A surety bond which provides assurance of a bidder's performance on two or more contracts in lieu of separate bonds for each contract. The amount for a blanket bond shall be established by the comptroller based on the bidder's annual level of participation in the state purchasing program.

(10) Brand name--A trade name or product name which identifies a product as having been made by a particular manufacturer.

(11) Centralized master bidders list (CMBL)--A list maintained by the comptroller containing the names and addresses of prospective bidders and catalog information systems vendors.

(12) Comptroller--The Comptroller of Public Accounts of the State of Texas or the designated and authorized representative of the Comptroller of Public Accounts of the State of Texas.

(13) Contract value or the value of a contract--The estimated dollar amount that a state agency may be obligated to pay pursuant to the contract and all executed and proposed amendments, extensions and renewals of the contract.

(14) Contractor--A vendor that contracts to provide goods or services to the state under the Act and all successors-in-interest to that contractor.

(15) Cooperative purchasing program--A program to provide purchasing services to qualified cooperative entities, as defined herein.

(16) Debarment--An exclusion from contracting or subcontracting with state agencies on the basis of any cause set forth in the Act or these rules, commensurate with the seriousness of the offense, performance failure, or inadequacy to perform.

(17) Director--The director of the division.

(18) Distributor purchase--Purchase of repair parts for a unit of major equipment that are needed immediately or as maintenance contracts for laboratory/medical equipment.

(19) Division--The organizational division within the office of the Comptroller of Public Accounts for the State of Texas performing the responsibilities identified in the Act for and under the direction of the comptroller.

(20) Emergency procurement--A situation requiring the state agency to make the procurement more quickly to prevent a hazard to life, health, safety, welfare, or property or to avoid undue additional cost to the state.

(21) Environmentally sensitive products--Products that protect or enhance the environment, or provide less risk to the environment than traditionally available products.

(22) Equivalent product--A product that is comparable in performance and quality to the specified product.

(23) Electronic State Business Daily (ESBD)--A business daily made available on the Internet at an electronic procurement marketplace to which state agencies post contract opportunities that will exceed $25,000 in value.

(24) Formal bid--A written bid submitted in a sealed envelope in accordance with a prescribed format, or an electronic data interchange transmitted to the comptroller in accordance with procedures established by the comptroller.

(25) Group purchasing program--A purchasing program that offers discount prices to two or more state agencies, which is formed as a result of interagency or interlocal cooperation and follows all applicable statutory standards for purchases.

(26) Historically Underutilized Business or HUB--A historically underutilized business as defined by Government Code, Chapter 2161 and Subchapter D, Division 1 of these rules.

(27) Informal bid--An unsealed, competitive bid submitted by letter, telephone, or other means.

(28) Invitation for bids (IFB)--A written request for submission of a bid; also referred to as a bid invitation.

(29) Invoice--A document presented by a contractor for payment, which includes information necessary for payment processing, and is received by mail, hand delivery, electronically, or by facsimile transmission.

(30) Late bid--A bid that is received at the place designated in the bid invitation after the time set for bid opening.

(31) Level of quality--The ranking of an item, article, or product in regard to its properties, performance, and purity.

(32) Local government--A county, municipality, special district, school district, junior college district, regional planning commission, or other political subdivision of the state pursuant to Local Government Code, §271.101.

(33) Manufacturer's price list--A price list published in some form by the manufacturer and available to and recognized by the trade. The term does not include a price list prepared especially for a given bid.

(34) Multiple award contract (as it applies to Multiple Award Schedule Contracts)--An award of a contract for an indefinite amount of one or more similar goods or services from a vendor.

(35) Multiple award contract procedure--A purchasing procedure by which the comptroller establishes one or more levels of quality and performance and makes more than one award at each level.

(36) Non-competitive purchase--A purchase of goods or services (also referred to as "spot purchase") that does not exceed the amount stated in §20.82 of this title (relating to Delegated Purchases).

(37) Notice of award--A letter signed by the comptroller or the designee which awards and creates a term contract.

(38) Open market purchase--A purchase of goods, usually of a specified quantity, made by buying from any available source in response to an open market requisition.

(39) Performance bond--A surety bond which provides assurance of a bidder's performance of a certain contract. The amount for the performance bond shall be based on the bidder's annual level of potential monetary volume in the state purchasing program. Acceptable forms of bonds are those described in the definition for "bid deposit."

(40) Perishable goods--Goods that are subject to spoilage within a relatively short time and that may be purchased by agencies under delegated authority.

(41) Post-consumer materials--Finished products, packages, or materials generated by a business entity or consumer that have served their intended end uses, and that have been recovered or otherwise diverted from the waste stream for the purpose of recycling.

(42) Pre-consumer materials--Materials or by-products that have not reached a business entity or consumer for an intended end use, including industrial scrap material, and overstock or obsolete inventories from distributors, wholesalers, and other companies. The term does not include materials and by-products generated from, and commonly reused within, an original manufacturing process or separate operation within the same or a parent company.

(43) Prescribed form--The entry screens available in the ESBD.

(44) Proprietary--Products or services manufactured or offered under exclusive rights of ownership, including rights under patent, copyright, or trade secret law. A product or service is propri-

etary if it has a distinctive feature or characteristic which is not shared or provided by competing or similar products or services.

(45) Purchase orders--A document issued by a qualified ordering entity to make a purchase under a term contract issued by the comptroller by these rules.

(46) Purchasing functions--The development of specifications, receipt and processing of requisitions, review of specifications, advertising for bids, bid evaluation, award of contracts, and inspection of merchandise received. The term does not include invoice, audit, or contract administration functions.

(47) Qualified cooperative entity--An entity that qualifies for participation in the cooperative purchasing program and includes:

(A) a local government;

(B) a mental health and mental retardation community center identified in Government Code, §2155.202, that receive grants-in-aid under the provisions of Health and Safety Code, Chapter 534, Subchapter B;

(C) an assistance organization as defined in Government Code, §2175.001, that receive any state funds; and

(D) a political subdivision, as defined by Government Code, Chapter 791.

(48) Qualified Ordering Entity--An entity that is either:

(A) a state agency; or

(B) a qualified cooperative entity that has registered with the comptroller to participate in the cooperative purchasing program as defined in Local Government Code, Subchapter D, §271.081.

(49) Recycled material content--The portion of a product made with recycled materials consisting of pre-consumer materials (waste), post-consumer materials (waste), or both.

(50) Recycled materials--Materials, goods, or products that contain recyclable material, industrial waste, or hazardous waste that may be used in place of raw or virgin materials in manufacturing a new product.

(51) Recycled product--A product, including recycled steel that meets the requirements for recycled material content as prescribed by the rules established by the Texas Commission on Environmental Quality in consultation with the comptroller.

(52) Registered agent--A representative designated by each state agency responsible for posting eligible procurement opportunities in the ESB.

(53) Remanufactured product--A product that has been repaired, rebuilt, or otherwise restored to meet or exceed the original equipment manufacturer's (OEM) performance specifications; provided, however, the warranty period for a remanufactured product may differ from the OEM warranty period.

(54) Request for proposal--A written request for offers concerning goods or services the state intends to acquire by means of the competitive sealed proposal procedure.

(55) Requisition--

(A) Open market purchase requisition. An initiating request from an agency describing needs and requesting the comptroller to purchase goods or services to satisfy those needs.

(B) Term contract purchase requisition. A request from a qualified ordering entity for delivery of goods under an existing term contract.

(56) Resolution--Document of legal intent adopted by the governing body of a qualified cooperative entity that evidences the qualified cooperative entity's participation in the cooperative purchasing program.

(57) Respondent--A person that submits a response to a solicitation.

(58) Reverse auction--A real time bidding procedure that is Internet dependent and which is conducted at a pre-scheduled time and Internet location in which multiple suppliers, anonymous to each other, submit bids for designated goods or services.

(59) Schedule--A list of multiple award contracts from which agencies may purchase goods and services.

(60) Sealed bid--A formal written bid.

(61) Solicitation--An invitation for bids or a request for proposals or any other document issued by a state agency for the purpose of soliciting offers in any form from a vendor to sell goods or services to the state and that includes at a minimum the information identified in Government Code, §2155.083(g).

(62) Specification--A concise statement of a set of requirements to be satisfied by a product, material or service, indicating whenever appropriate the procedures to determine whether the requirements are satisfied.

(63) Standard specification--A description of what the purchaser requires and what a bidder or proposer must offer.

(64) State agency--A state agency as the term is defined under Government Code, Title 10, §2151.002.

(65) Successor-in-interest--Any business entity that acquires or otherwise obtains the controlling ownership of a business entity.

(66) Tabulation of bids--The recording of bids and bidding data for purposes of bid evaluation and recordkeeping.

(67) Term contract purchase--A purchase by a qualified ordering entity under a term contract, which established a source of supply for particular goods at a given price for a specified period of time.

(68) Testing--An element of inspection involving the determination, by technical means, of the properties or elements of item(s) or component(s), including function operation.

(69) Texas uniform standards and specification--Standards and specifications prepared and published by the standards and specifications program of the comptroller.

(70) Unit price--The price of a selected unit of a good or service, e.g., price per ton, per labor hour, or per foot.

(71) Using agency--An agency of government that requisitions goods or services through the comptroller.

(72) Vendor--A person that offers goods and services in the state.

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

Filed with the Office of the Secretary of State on October 26, 2016

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Don Neal
Chief Deputy General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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SUBCHAPTER B. PUBLIC PROCUREMENT AUTHORITY AND ORGANIZATION

DIVISION 1. PRIMARY AND DELEGATED PROCUREMENT AUTHORITY

34 TAC §§20.81 - 20.84

The Comptroller of Public Accounts proposes new §20.81, concerning general purchasing provisions; §20.82, concerning delegated purchases; §20.83, concerning assistance with delegated purchasing; and §20.84, concerning advisory committees.

The comptroller proposes to rename Chapter 20 Statewide Procurement and Support Services and rename Subchapter B Public Procurement Authority and Organization. New §§20.81 - 20.84 will be part of Subchapter B, under new Division 1, Primary and Delegated Procurement Authority.

New §20.81 makes new Chapter 20 rules applicable to all purchases of goods or services made under the State Purchasing and General Services Act, Government Code, Title 10, Subtitle D, Chapter 2151, *et seq.*

New §20.82 incorporates former §20.41 in Chapter 20, revises it to clarify the types and conditions associated with delegated purchases, and increases the dollar amount of delegated one time purchases to $50,000.

New §20.83 incorporates former §20.31(g) in the reorganization of Chapter 20 and revises it to refer to the comptroller instead of the commission.

New §20.84 incorporates former §20.52 in the reorganization of Chapter 20.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rules will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the comptroller's procedures for statewide procurement and support services. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the proposals may be submitted to Amy Comeaux, Statewide Procurement Division, at amy.comeaux@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposals in the *Texas Register.*

The new sections are proposed under Government Code §§2155.0012, 2155.267, 2155.503, 2156.0012, 2156.010, 2156.124, 2156.126, 2161.0012, 2161.002, 2171.002, 2171.055, 2172.0012, and 2176.110; Local Government, §271.082; and Education Code, §34.001.

The following statutes are affected by the new sections: Government Code, §§572.069, 2155.061, 2155.075, 2155.0755, 2155.78, 2155.080, 2155.081, 2155.083, 2155.131, 2155.261, 2155.262, 2155.263, 2155.264, 2155.265, 2155.266, 2155.269, 2156.003, 2261.251, 2261.252, 2261.256, 2262.053, 2262.055, 2261.256; Local Government Code, §271.082; and Education Code, §34.001.

§20.81. General Purchasing Provisions.

(a) These rules apply to purchases of goods and services by the comptroller pursuant to the authority of the Act.

(b) These rules apply to any state agency delegated the authority to purchase goods and services pursuant to the Act and these rules.

§20.82. Delegated Purchases.

(a) General delegation. The purchasing functions for the purchase of the following goods or services are delegated to state agencies:

(1) one-time purchases of goods, including goods for resale that do not exceed $50,000;

(2) emergency purchases;

(3) purchases of perishable goods;

(4) purchases of services, including services for resale, the estimated cost of which does not exceed $100,000;

(5) purchases of publications directly from the publisher;

(6) fuel, oil, and grease purchases; and

(7) distributor purchases.

(b) Provisions generally applicable to delegated purchases.

(1) Competitive bidding is not required for purchases of $5,000 or less.

(2) All bids must be obtained from sources which normally offer for sale the merchandise being purchased.

(3) Items purchased under delegated authority may not include scheduled items, items available under a term contract (unless purchased in quantities less than minimum ordering quantities shown in contract), or any item required by law to be purchased from a particular source.

(4) The comptroller must solicit formal bids from all eligible vendors on the centralized master bidders list (CMBL) when making purchases in excess of $25,000. The comptroller waives the requirement for state agencies to solicit bids from all eligible vendors on the list when making purchases under subsection (d) of this section. State agencies must solicit from all eligible vendors on the CMBL when making service purchases in excess of $100,000 that the comptroller has delegated to an agency.

(c) Withdrawal of delegated purchase authority. The comptroller will verify compliance with established procedures for delegated purchases and may withdraw delegated purchase authority in whole or part from a state agency for continued violations after giving adequate warning. The comptroller will report to the governor, lieutenant governor, speaker of the house of representatives, and Legislative Budget Board the findings that a state agency has not followed the comptroller's rules or the laws related to the delegated purchases.

(d) Provisions applicable to particular delegated purchases.

(1) Goods purchases. Purchases of goods may be made in accordance with the following provisions.

(A) State agencies must attempt to obtain at least three informal bids, including a minimum of two bids from historically underutilized businesses (HUBS), on all purchases of goods in excess of $5,000 and not over $25,000. State agencies must meet competitive bidding requirements and may supplement the list of bidders obtained from the CMBL with potential bidders contained in the HUBs Directory, which is maintained and accessible electronically on the comptroller's website. If a state agency is unable to locate two HUBs from the comptroller's CMBL and HUB Directory or other available sources, the state agency must make a written notation in the purchase file of all reference sources used.

(B) State agencies must attempt to provide a copy of the bid to the last vendor who held the contract in addition to the informal bid requirement.

(2) Emergency purchases. The comptroller will approve payment for emergency purchases in accordance with the following provisions.

(A) At least three informal bids should be obtained whenever possible.

(B) For an emergency purchase of goods or services exceeding $25,000, a state agency must send a full written explanation of the emergency along with other documentation required by the comptroller.

(C) The agency may contact the comptroller for advice and assistance in the handling of emergency purchases. The comptroller may not approve an invoice for an emergency purchase unless the agency has complied with the foregoing requirements. This section does not apply to purchases made in accordance with Government Code, Chapter 418 (Texas Disaster Act of 1975).

(3) Perishable goods. Purchases made under this authority must be obtained through competitive bids, and appropriate documentation must be forwarded to the comptroller.

(4) Services. Purchases of services estimated to cost no more than $100,000 per year per contract are delegated and must be obtained through a competitive selection process, and appropriate documentation must be forwarded to the comptroller for prepayment approval.

(A) A state agency is required to maintain documentation justifying proprietary purchases of services over $25,000 and for purchases expected to cost more than $25,000 per year.

(B) State agencies must attempt to obtain at least three informal bids, including a minimum of two bids from HUBs, on all service purchases in excess of $5,000 and not over $25,000. As a supplement to the CMBL, agencies may refer to the comptroller's HUB Directory, which is maintained and accessible electronically, to locate HUBs in the agencies' geographic region. If an agency is unable to locate two HUBs from the comptroller's HUB Directory or other available sources, the state agency must make a written notation in the purchase file of all reference sources used.

(C) For purchases of services estimated to cost more than $25,000 and less than $100,000, state agencies shall, as a minimum, solicit formal bids from all CMBL and HUB Directory vendors located in the state agencies' geographic region.

(D) For purchases of services estimated to cost more than $100,000 per year, the comptroller must review any proposed specifications or statements of work and determine whether the comptroller or the state agency should make the advertisement and award. The comptroller may determine that the service should be advertised to the entire CMBL rather than to only those vendors in the state agency's geographical area. If no competitive advantage would be obtained by having the comptroller make the advertisement and award, the comptroller may permit the state agency to do so as a delegated purchase.

(5) Publications. A state agency may purchase publications directly from the publisher when such publications are not available through statewide contract or through competitive bidding. Direct publication orders shall be made by following guidelines established by the comptroller. Examples of direct publications include, but are not limited to:

(A) foreign publications;

(B) out-of-print or rare publications;

(C) back issues of magazines, journals, and newspapers;

(D) publications of professional societies;

(E) prepared films, tapes, and discs (audio, visual, or both);

(F) computer software;

(G) collections of any of the foregoing items, and microfilm or microfiche copies of any of the foregoing items; and

(H) Library of Congress cards.

(6) Fuel, oil, and grease. A state agency may make fuel, oil, and grease purchases at service stations or in bulk. Fuel, oil, and grease purchases shall be made by following guidelines suggested by the comptroller. Non-competitive and emergency purchase procedures apply to purchases at service stations.

(7) Distributor purchases. A state agency may make distributor purchases by following guidelines established by the comptroller. A state agency may not purchase any of the following on a distributor purchase basis: consumable items; labor of any kind (see "service"); "will fit" parts (non-OEM); parts for stock; contract items; electrical parts for electric motors; electrical switch panel boards; electrical accessories.

(e) Specific delegations. The authority to grant specific delegations resides with the director. The application method, review process, delegation finding, and appeal process will be set forth by policy statement of the director. At a minimum, state agencies granted specific delegations shall meet the following criteria:

(1) procurement audit standards set forth in §20.510 of this title (relating to Auditing of Purchase Related Documentation);

(2) minimum training and certification standards established in the State Procurement Manual and Contract Management Guide; and

(3) approved processes and procedures for the specific type of delegation being requested. All processes and procedures are subject to the prior review, revision and approval of the director.

(f) Debarred vendors. State agencies shall ensure that debarred vendors do not participate in state contracting and will establish procedures to ensure awards are not made to debarred vendors.

§20.83. Assistance with Delegated Purchasing.

If a state agency desires to use the comptroller's services for a delegated or exempt purchase, a written request shall be made in a manner and form determined by the director and containing information the director deems relevant to the purchase and processing of the request. Such service shall be by cost recovery and the director shall determine and include all relevant factors related to providing the service on a cost

basis. In no event shall non-delegated purchases be placed in jeopardy by the processing of delegated or exempt purchases.

§20.84. Advisory Committees.

(a) The comptroller establishes the purchasing advisory committees as set forth in subsections (c) and (d) of this section. Advisory committees shall comply with applicable requirements of Government Code, Chapter 2110 relating to State Agency Advisory Committees. The Advisory Committee on Procurement shall also comply with specific statutory authority provided by Government Code, §2155.080; and the Vendor Advisory Committee shall also comply with specific statutory authority provided by Government Code, §2155.081.

(b) Advisory committees in subsections (c) and (d) of this section are authorized to carry out the following functions.

(1) Establish their own rules of operation.

(2) The director shall establish the size of the advisory committee, with the approval of the comptroller.

(3) The chair of a purchasing advisory committee shall provide to the director, or his designee, an annual report of the committee's activities.

(4) Annually, the director, or his designee, shall evaluate the committee's work, usefulness, and the costs related to the committee's existence, including the cost of the comptroller's office staff time spent in support of the committee's activities. The information developed in the evaluation shall be reported to the Legislative Budget Board biennially.

(5) Members of an advisory committee may not be reimbursed for expenses associated with conducting committee business, including travel expenses, unless otherwise authorized by the General Appropriations Act, Article IX, or approved by the governor and the Legislative Budget Board.

(6) An advisory committee established by the comptroller shall be abolished on the fourth anniversary of the first meeting of the advisory committee:

(A) unless the comptroller acts to continue or re-establish the committee in existence; and

(B) unless a specific duration is prescribed by statute for the advisory committee to exist.

(7) If the comptroller acts to continue or re-establish the committee's existence, it shall continue to exist for an additional four year term. Comptroller action to continue or re-establish a committee may include, without limitation, issuing a letter appointing or re-appointing committee members to an additional term.

(c) The Advisory Committee on Procurement shall be composed of officers or employees from the comptroller, from state agencies, including institutions of higher education, and from political subdivisions who are invited by the comptroller to serve on the committee. The officers and employees who serve on the committee shall be experienced in public purchasing, public finance, or possess other appropriate expertise to serve on the committee. The purpose of the Advisory Committee on Procurement is to represent before the comptroller the state agency purchasing community and the political subdivisions that use the comptroller's purchasing services. The tasks of the committee are to:

(1) provide a method for state agencies and political subdivisions to bring issues to the attention of the comptroller;

(2) review issues brought forth by the comptroller;

(3) develop and make recommendations on improvements to the procurement process;

(4) review and comment on findings and recommendations related to purchasing that are made by state agency internal auditors or by the state auditor;

(5) develop an assessment of the committee, committee goals and measurable objectives; and

(6) participate in an annual review of committee activities and make recommendations about the future direction of the committee at the end of each fiscal year.

(d) The Vendor Advisory Committee shall be composed of employees from the comptroller and vendors who have done business with the state, and who are invited by the comptroller to serve on the committee. The comptroller shall invite a cross-section of the vendor community to serve on the committee, both large and small businesses and vendors who provide a variety of different goods and services to the state. The purpose of the Vendor Advisory Committee is to represent before the comptroller the vendor community, to provide information to vendors, and to obtain vendor input on state procurement practices. The tasks of the committee are to:

(1) obtain vendor input and develop and make recommendations on improvements to the procurement process;

(2) develop an assessment of the committee, committee goals and measurable objectives at the end of each fiscal year; and

(3) participate in an annual review of the committee's activities and make recommendations about the future direction and continuance of the committee at the end of each fiscal year.

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

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Don Neal
Chief Deputy General Counsel
Comptroller of Public Accounts
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DIVISION 2. PUBLICIZING PROCUREMENT: CMBL, ESBD, AND VPTS

34 TAC §§20.106 - 20.115

The Comptroller of Public Accounts proposes new §20.106, concerning electronic purchasing system; §20.107, concerning centralized master bidders list; §20.108, concerning authority; §20.109, concerning purpose; §20.110, concerning notice and information posting requirements; §20.111, concerning internet access; §20.112, concerning fees; §20.113, concerning registered agent requirements; §20.114, concerning solicitation posting procedures; and §20.115, concerning vendor performance tracking system.

The comptroller proposes to rename Chapter 20 Statewide Procurement and Support Services and rename Subchapter B Public Procurement Authority and Organization. New §§20.106 -

20.115 will be part of Subchapter B, under new Division 2, Publicizing Procurement: CMBL, ESBD, and VPTS.

New §20.106 incorporates former §20.31(e) in the reorganization of Chapter 20 and revises it to refer to the comptroller instead of the commission.

New §20.107 incorporates former §20.34 in the reorganization of Chapter 20 and revises it to generally apply solicitation methods and deletes references to bids or proposals.

New §20.108 incorporates former §20.201 in the reorganization of Chapter 20 and revises it to refer to the comptroller instead of the commission.

New §20.109 incorporates former §20.202 in the reorganization of Chapter 20 except that former §20.202(d) remains repealed as inconsistent with the phrase contract value as defined by proposed §20.25.

New §20.110 incorporates the provisions of former §20.204 for the statewide electronic business daily posting requirements and revises it to refer to the comptroller instead of the Texas Building and Procurement Commission.

New §20.111 incorporates the provisions of former §20.205 in the reorganization of Chapter 20.

New §20.112 incorporates the provisions of former §20.206 in the reorganization of Chapter 20 and revises it to refer to the comptroller instead of the commission.

New §20.113 incorporates the provisions of former §20.211 in the reorganization of Chapter 20.

New §20.114 incorporates the provisions of former §20.212 in the reorganization of Chapter 20.

New §20.115 incorporates the provisions of former §20.108 in the reorganization of Chapter 20 and revises it to require state agencies to enter reports on contractor performance within 30 days after the completion of a contract or order, includes an A, B, C, D, or F grading system as required by recent legislation, and explains how the new grades will integrate the existing reports that lack letter grades.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rules will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the comptroller's procedures for statewide procurement and support services. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the proposals may be submitted to Amy Comeaux, Statewide Procurement Division, at amy.comeaux@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposals in the *Texas Register.*

The new sections are proposed under Government Code §§2155.0012, 2155.267, 2155.503, 2156.0012, 2156.010, 2156.124, 2156.126, 2161.0012, 2161.002, 2171.002, 2171.055, 2172.0012, and 2176.110; Local Government, §271.082; and Education Code, §34.001.

The following statutes are affected by the new sections: Government Code, §§572.069, 2155.061, 2155.075, 2155.0755, 2155.78, 2155.080, 2155.081, 2155.083, 2155.131, 2155.261, 2155.262, 2155.263, 2155.264, 2155.265, 2155.266, 2155.269, 2156.003, 2261.251, 2261.252, 2261.256, 2262.053, 2262.055, 2261.256; Local Government Code, §271.082; and Education Code, §34.001.

§20.106. Electronic Purchasing System.

The comptroller may use electronic services to improve the efficiency and effectiveness of the purchasing system. Such services are provided on a cost recovery basis to those who choose to use them. Examples of such services include electronic delivery of purchase orders, electronic receipt of bids and proposals, and electronic bulletin boards.

§20.107. Centralized Master Bidders List.

(a) The comptroller maintains the Centralized Master Bidders List (CMBL) of the names and addresses of vendors which have registered for inclusion on the CMBL. The CMBL is maintained for the state's use in procuring goods and services through open and fair competition. Solicitations shall be transmitted to vendors on the CMBL for the solicited good and/or service designated by the vendor for open market, term contracts, competitive sealed proposal acquisitions and delegated purchases in excess of the non-competitive bid limit.

(b) Registration for the Centralized Master Bidders List is an on-line process with a vendor managed web based system. There is a $70.00 annual fee to remain registered on the CMBL.

(c) It is the vendor's responsibility to maintain their CMBL profile to ensure correct information for receipt of bids based on products or services which can be provided for selected districts for the State of Texas.

(d) A vendor may be administratively removed from the CMBL for one or more of the following reasons:

(1) failing to pay or unnecessarily delaying payment of damages assessed by the comptroller;

(2) failing to remit the required CMBL fee; or

(3) any factor set forth in Government Code, §2155.070 and §2155.077.

(e) A vendor which has been removed from the CMBL shall not be reinstated until expiration of the period for which the vendor was removed and approval is granted.

(f) An error in addressing a bid invitation or request for proposal or a failure of the post office to deliver the solicitation will not be sufficient reason to require the comptroller to reject all solicitation responses.

(g) State agencies shall use the CMBL to select bidders for competitive bids or proposals and to the fullest extent possible for purchases exempt from the comptroller's purchasing authority. This requirement does not apply to the Texas Department of Transportation or to an institution of higher education as defined by Education Code, §61.003, but an institution of higher education should use the CMBL when possible.

(h) As authorized by Government Code, §2155.269, a state agency may waive the requirement to solicit only from bidders listed on the Centralized Master Bidders List (CMBL) by obtaining approval from its agency head or designee to add non-CMBL bidders to the final

bid list. Non-CMBL bidders can be added to the final bid list for specific solicitations where the requirement to solicit only CMBL bidders is not warranted, such as to increase competition.

§20.108. Authority.

Pursuant to the authority granted by Government Code, §2155.083, the comptroller sets forth the following rules regarding procedures and practice for posting procurement opportunities in the Electronic State Business Daily (ESBD).

§20.109. Purpose.

(a) The ESBD is established as a means for all state agencies to post notice directly and electronically in an electronic procurement marketplace on the Internet before making a procurement with a value that exceeds $25,000.

(b) The requirements of this subchapter are in addition to the requirements of other laws relating to the solicitation of bids, proposals, or other applicable expressions of interest for a procurement by a state agency. This subchapter does not affect whether a state agency is required to award a contract for procurement through competitive bidding, competitive sealed proposals, or another purchasing method.

(c) This section applies to each state agency making a procurement that will exceed $25,000.00 in value, without regard to the source of funds the agency will use for the procurement, including a procurement that:

(1) is otherwise exempt from the comptroller's purchasing authority;

(2) is made under delegated purchasing authority;

(3) is related to a construction project; or

(4) is a procurement of professional or consulting services.

(d) A solicitation does not include an agreement between a state agency and a state agency, local government, or another government entity under Government Code, Chapters 771, 791, 792, or other law.

§20.110. Notice and Information Posting Requirements.

(a) The comptroller shall make the ESBD available on the Internet through an electronic procurement marketplace maintained by the comptroller.

(b) The comptroller shall post in the ESBD other information relating to the business activity of the state that the comptroller considers to be of interest to the public. The comptroller may develop a means for each state agency to post relevant information electronically. This information will also be accessible on the comptroller's web site.

(c) The comptroller will electronically transfer to the ESBD all procurements in excess of $25,000 that the comptroller has processed on behalf of state agencies.

§20.111. Internet Access.

(a) It is the responsibility of each state agency to coordinate with the Department of Information Resources (DIR) to secure Internet service and computer hardware and software necessary for each registered agent to have daily access to the ESBD.

(b) To accommodate businesses seeking to become potential bidders or respondents that do not have the technical means to access the ESBD, governmental and non-governmental entities such as public libraries, chambers of commerce, trade associations, small business development centers, economic development departments of local governments, and state agencies may provide public access to the ESBD.

§20.112. Fees.

(a) A government agency may recover the direct cost of providing the public access only by charging a fee for downloading procurement notices and bid or proposal solicitation packages posted on the ESBD. For state agencies, these fees may not exceed the state agency's published rate for open records requests.

(b) The comptroller and other state agencies may not charge a fee designed to recover the cost of preparing and gathering the information that is published in the ESBD. These costs are considered part of a procuring agency's responsibility to publicly inform potential bidders or respondents of its procurement contract opportunities.

(c) A non-governmental entity may use information posted in the ESBD in providing a service that is more than only the downloading of information from the business daily, including a service by which appropriate bidders or respondents are matched with information that is relevant to those bidders or respondents, and may charge a lawful fee that the entity considers appropriate for the service.

§20.113. Registered Agent Requirements.

(a) Each state agency must designate a minimum of one person to be the registered agent for posting all solicitations to the ESBD. State agencies with field or satellite offices may establish a registered agent at those offices or require that procurement contract opportunities be sent to the main office for posting in compliance with this chapter.

(b) To add a new state agency account, a written request signed by the agency head or designee must be submitted to the comptroller to create a superuser account for the agency. All other registered users for that agency will be registered through the superuser account.

(c) The user/registered agent information will automatically be entered by the ESBD each time the registered agent accesses the ESBD to post new procurement opportunities.

§20.114. Solicitation Posting Procedures.

(a) Each state agency must comply with the procedures described herein when posting solicitation notices on the ESBD. The comptroller will provide an ESBD User's Manual on-line with written step-by-step instructions for accessing the ESBD.

(b) Information for each solicitation must be data entered directly and electronically by the registered agent, via Internet access, to the ESBD, using the prescribed electronic format. The registered agent must enter the minimum required information as stated in §20.214 of this title (relating to Notice and Information Posting Requirement) using the on-line format provided by the comptroller in the ESBD.

(c) The prescribed format will contain data fields for each of the required information items listed above. Contact information for the posting will automatically default to the information provided on the registered agent's registration form, but can be manually changed to reflect contact information on procurement solicitations for which the registered agent is not the contact.

(d) The registered agent/user must select the "Add this listing" option to complete the posting process. All required information must be entered for the system to accept the posting or by electronic file transfer.

§20.115. Vendor Performance Tracking System.

(a) The comptroller's statewide procurement division shall create, maintain, and use the vendor performance tracking system on the comptroller's web page to measures vendor performance for purchases over $25,000, and is used by the comptroller to score vendor performance in the areas of commodity delivery and service delivery and performance.

(b) No later than 30 days after the completion or termination of a purchase order or contract, each state agency shall enter a perfor-

mance review in the vendor performance tracking system on the comptroller's web page and according to the provisions of Subchapter F, Division 2 of this chapter.

(c) Based on vendor performance reviews of contractors provided by state agencies, the system will generate one overall vendor performance letter score for each contractor in the system in the following manner.

(1) For a contractor that has received one or more performance reports in the system prior to the implementation of this section, the system will add all the numerical values assigned to each such report for the contractor and divide the sum by the total number of such reports in the system which shall be the single historic average score for the contractor.

(2) With the implementation of the system described in this section, each performance review letter score rating assigned to a contractor by a state agency will be assigned a numerical value based on the following scale: A=100, B=85, C=75, D=65, F=50.

(3) A system numerical score for the contractor will be determined by the sum of all numerical values for each review letter score rating assigned to a contractor on and after the implementation date of the system described in this section plus the single historic average score, if any.

(4) The system numerical score will be divided by either:

(A) the number of letter rating scores provided for the contractor; or

(B) if there is a historical average score, one (1) plus the number of letter rating scores provided for the contractor; and

(5) Using the number determined under paragraph (4) of this subsection, the system will assign a single letter grade for the contractor based on the following scale: 90-100=A, 80-89=B, 70-79=C, 60-69=D, 59 or below=F.

(6) Example: Vendor A has a score of 88 in the old system. In the new system, vendor A gets assessed a score of A by one state agency purchaser and C by another state agency purchaser. The formula applied by the system is as follows: 88+100+75/3= 87.6. The vendor has a numeric score of 87.6, so the displayed score would be a "B".

(d) The comptroller shall include the performance reviews in a vendor performance tracking system.

(e) Vendors who receive a grade lower than a C may file a protest to the classification according the protest procedures in Subchapter F, Division 2 of this chapter.

(f) The comptroller shall make the vendor performance tracking system accessible to the public on the comptroller's Internet website.

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

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DIVISION 3. CONTRACT MANAGEMENT GUIDE AND TRAINING

34 TAC §§20.131 - 20.133

The Comptroller of Public Accounts proposes new §20.131, concerning procurement manual and contract management guide; §20.132, concerning compliance; and §20.133, concerning training program.

The comptroller proposes to rename Chapter 20 Statewide Procurement and Support Services and rename Subchapter B Public Procurement Authority and Organization. New §§20.131 - 20.133 will be part of Subchapter B, under new Division 3, Contract Management Guide and Training.

New §20.131 implements the statutory requirement to promulgate a state procurement manual and contract management guide, identifies the guide's essential elements, and identifies consultation requirements prior to promulgation.

New §20.132 implements the statutory requirement that each state agency comply with the state contract management guide and either adopt the comptroller's guide or create its own guide consistent with the state guide.

New §20.133 incorporates the provisions of former §20.31(g) in the reorganization of Chapter 20 and revises it to add a fee to cover the comptroller's costs and implements statutory requirements for training members of state agency governing bodies.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rules will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the comptroller's procedures for statewide procurement and support services. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the proposals may be submitted to Amy Comeaux, Statewide Procurement Division, at amy.comeaux@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposals in the *Texas Register.*

The new sections are proposed under Government Code §§2155.0012, 2155.267, 2155.503, 2156.0012, 2156.010, 2156.124, 2156.126, 2161.0012, 2161.002, 2171.002, 2171.055, 2172.0012, and 2176.110; Local Government, §271.082; and Education Code, §34.001.

The following statutes are affected by the new sections: Government Code, §§572.069, 2155.061, 2155.075, 2155.0755, 2155.78, 2155.080, 2155.081, 2155.083, 2155.131, 2155.261,

2155.262, 2155.263, 2155.264, 2155.265, 2155.266, 2155.269, 2156.003, 2261.251, 2261.252, 2261.256, 2262.053, 2262.055, 2261.256; Local Government Code, §271.082; and Education Code, §34.001.

§20.131. Procurement Manual and Contract Management Guide.

(a) The comptroller shall develop and periodically update a procurement manual and contract management guide for use by state agencies.

(b) To prepare the guide, the comptroller shall consult with the attorney general and the Department of Information Resources. Subject to the approval by the legislative audit committee for inclusion in the audit plan under Government Code, §321.013(c), the comptroller may consult with the state auditor.

(c) The guide shall include:

(1) information regarding the primary duties of a contract manager, including how to:

(A) develop and negotiate a contract;

(B) select a contractor; and

(C) monitor contractor and subcontractor performance under a contract:

(2) model provisions for state agency contracts that:

(A) distinguish between essential provisions that a state agency must include in a contract to protect the interests of this state and recommended provisions that a state agency may include in a contract;

(B) recognize the unique contracting needs of an individual state agency or program and provide sufficient flexibility to accommodate those needs, consistent with protecting the interests of this state;

(C) include maximum contract periods under which a new competitive solicitation is not necessary; and

(D) include the model contract management process developed under Government Code, §2262.104 and recommendations on the appropriate use of the model:

(3) recommended time frames under which a state agency may issue a competitive solicitation for a major contract in relation to the date on which the contract is to be executed;

(4) procedures under which a state agency is required to solicit explanations from qualified potential respondents who did not respond to a competitive solicitation for a contract on which fewer than two qualified bids were received by the agency; and

(5) procedures for major contracts that outsource a state function or process to a contractor, including when applicable the use of documents required under Government Code, Chapter 2054, Subchapter J.

§20.132. Compliance.

(a) Each state agency shall comply with the state procurement manual and contract management guide.

(b) Procurement plan. State agencies shall formulate an agency procurement plan that identifies an agency's management controls and purchasing oversight authority in accordance with the policy guidance contained in the comptroller's procurement manual and contract management guide. A state agency must submit a copy of the procurement plan during the comptroller's audit of the state agency's purchasing documents or upon request by the comptroller.

§20.133. Training Program.

(a) The comptroller hereby establishes the program authorized by Government Code, §2155.078. The comptroller delegates to the director the authority to administer the training, certification, and continuing education program for state agency purchasing personnel, including agencies exempted from the purchasing authority of the comptroller, and purchasing personnel employed by a political subdivision or other public entity of the state in accordance with Government Code, §2155.078 on a cost recovery basis. The director shall promulgate guidelines for administering this program. The training, certification, and continuing education programs shall include at a minimum:

(1) the selection of an appropriate procurement method by project type;

(2) procurement practices consistent with sound purchasing principles and state law;

(3) procurement and contract management ethics; and

(4) training conducted by the Department of Information Resources on purchasing technologies.

(b) The comptroller shall also establish a training program to provide an abbreviated program for training the members of the governing bodies of state agencies. The training may be provided together with other required training for members of state agency governing bodies.

(c) All members of the governing body of a state agency shall complete at least one course of the training provided by the comptroller pursuant to this section, provided that this section does not apply to a state agency that does not enter into any contracts.

(d) The comptroller may assess a fee for the training provided pursuant to this section in an amount sufficient to recover the comptroller's costs to develop and provide such training.

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

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DIVISION 4. IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

34 TAC §§20.156 - 20.158

The Comptroller of Public Accounts proposes new §20.156, concerning certain employment for former state officer of employee restricted; §20.157, concerning adherence to ethical standards; and §20.158, concerning disclosure of potential conflicts of interest; certain contracts prohibited.

The comptroller proposes to rename Chapter 20 Statewide Procurement and Support Services and rename Subchapter B Public Procurement Authority and Organization. New §§20.156 -

20.158 will be part of Subchapter B, under new Division 4, Improper Business Practices And Personal Conflicts Of Interest.

New §20.156 implements new legislative restrictions on the employment of former state officer of employees.

New §20.157 incorporates the provisions of former §20.41(b) in the reorganization of Chapter 20 and revises it to refer to the comptroller instead of the commission.

New §20.158 defines financial interest, implements new legislative financial interest disclosure requirements for state officials or employees involved in contract decisions, and prohibits contract actions where identified agency officials or employees have a financial interest.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rules will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the comptroller's procedures for statewide procurement and support services. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the proposals may be submitted to Amy Comeaux, Statewide Procurement Division, at amy.comeaux@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposals in the *Texas Register.*

The new sections are proposed under Government Code §§2155.0012, 2155.267, 2155.503, 2156.0012, 2156.010, 2156.124, 2156.126, 2161.0012, 2161.002, 2171.002, 2171.055, 2172.0012, and 2176.110; Local Government, §271.082; and Education Code, §34.001.

The following statutes are affected by the new sections: Government Code, §§572.069, 2155.061, 2155.075, 2155.0755, 2155.78, 2155.080, 2155.081, 2155.083, 2155.131, 2155.261, 2155.262, 2155.263, 2155.264, 2155.265, 2155.266, 2155.269, 2156.003, 2261.251, 2261.252, 2261.256, 2262.053, 2262.055, 2261.256; Local Government Code, §271.082; and Education Code, §34.001.

§20.156. Certain Employment for Former State Officer or Employee Restricted.

A former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving a person may not accept employment from that person before the second anniversary of the date the officer's or employee's service or employment with the state agency ceased.

§20.157. Adherence to Ethical Standards.

Employees of agencies who perform purchasing functions under delegated authority shall adhere to the same ethical standards required of comptroller employees, and shall avoid all conflicts of interest in their purchasing activities.

§20.158. Disclosure of Potential Conflicts of Interest; Certain Contracts Prohibited.

(a) Each state agency employee or official who is involved in procurement or in contract management for a state agency shall disclose to the agency any potential conflict of interest specified by state law or agency policy that is known by the employee or official with respect to any contract with a private vendor or bid for the purchase of goods or services from a private vendor by the agency.

(b) A state agency may not enter into a contract for the purchase of goods or services with a private vendor with whom any of the following agency employees or officials have a financial interest:

(1) a member of the agency's governing body;

(2) the governing official, executive director, general counsel, chief procurement officer, or procurement director of the agency; or

(3) a family member related to an employee or official described by paragraph (1) or (2) of this subsection within the second degree by affinity or consanguinity.

(c) A state agency employee or official has a financial interest in a person if the employee or official:

(1) owns or controls, directly or indirectly, an ownership interest of at least one percent in the person, including the right to share in profits, proceeds, or capital gains; or

(2) could reasonably foresee that a contract with the person could result in a financial benefit to the employee or official.

(d) A financial interest prohibited by this section does not include a retirement plan, a blind trust, insurance coverage, or an ownership interest of less than one percent in a corporation.

(e) This section shall not apply to contracts of the Employees Retirement System of Texas or the Teacher Retirement System of Texas, except for a contract with a nongovernmental entity for claims administration of a group health benefit plan under Insurance Code, Title 8, Subtitle H. Notwithstanding Government Code, §2261.001, this section applies to the Texas Department of Transportation and to an institution of higher education acquiring goods or services under Education Code, §51.9335 or §73.115.

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

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SUBCHAPTER C. PROCUREMENT METHODS AND CONTRACT FORMATION

DIVISION 1. PROCUREMENT PLANNING

34 TAC §§20.181 - 20.184

The Comptroller of Public Accounts proposes new §20.181, concerning state agency compliance and documentation responsibilities; §20.182, concerning selection of items for development of Texas uniform standards and specifications; §20.183, con-

cerning development of Texas uniform standards and specifications; and §20.184, concerning requisitions and specifications.

The comptroller proposes to rename Chapter 20 Statewide Procurement and Support Services and rename Subchapter C Procurement Methods and Contract Formation. New §§20.181 - 20.184 will be part of Subchapter C, under new Division 1, Procurement Planning.

New §20.181 requires state agencies to plan and document procurement transactions consistent with the contract management guide and in a manner that ensures compliance with record retention requirements, and to document the basis for any necessary variation from the guide.

New §20.182 incorporates former §20.63 in the reorganization of Chapter 20 except that former §20.63(4) remains repealed as historically unused and unnecessary since a vendor request may already be evaluated and adopted at the discretion of the division.

New §20.183 incorporates former §20.64 in the reorganization of Chapter 20 and is revised to ensure that all comments regarding revised specifications are reviewed and analyzed.

New §20.184 incorporates former §20.33(a) and (b) in the reorganization of Chapter 20, revises them to refer to the comptroller instead of the commission, revises former subsection (a) to identify the time the comptroller needs to procure a requested good or service, and adds a new paragraph to former subsection (a) to require state agencies to evaluate previously procured goods or services when requesting a re-procurement of the same good or service.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rules will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the comptroller's procedures for statewide procurement and support services. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the proposals may be submitted to Amy Comeaux, Statewide Procurement Division, at amy.comeaux@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposals in the *Texas Register.*

The new sections are proposed under Government Code, §§2155.0012, 2155.267, 2155.503, 2156.0012, 2156.010, 2156.124, 2156.126, and 2158.0031; Local Government Code, §271.082; and Education Code, §34.001.

The following statutes are affected by the new sections: Government Code, §§2155.061, 2155.062, 2155.063, 2155.064, 2155.065, 2155.067, 2155.074, 2155.0755, 2155.075, 2155.079, 2155.085, 2155.086, 2155.088, 2155.132, 2155.137, 2155.453, 2155.501, 2155.502, 2155.503, 2155.504, 2155.505, 2155.506, 2155.508, 2155.509, 2155.510, 2156.002, 2156.004, 2156.005, 2156.006, 2156.007, 2156.008, 2156.010, 2156.011, 2156.063, 2156.064, 2156.121, 2156.122, 2156.123, 2156.124, 2156.125, 2156.181, 2157.003, 2157.125, 2261.253, 2261.254, and 2261.255; and Local Government Code, §271.082; and Education Code, §34.001.

§20.181. State Agency compliance and Documentation Responsibilities.

(a) State agencies shall plan and document procurement transactions subject to this chapter in a manner consistent with requirements and guidelines set forth in the state procurement manual and contract management guide, including at a minimum:

(1) actions or documentation related to the agency's assessment of need for the specific commodity or service;

(2) its selection of the method of procurement to be used;

(3) the development of specifications;

(4) identification of evaluation criteria to determine the best value of the good or service;

(5) the process by which the procurement transaction is conducted; and

(6) the management of any resulting contract.

(b) State agencies shall plan and document procurement transactions in a manner that will ensure the agency's ability to comply with the requirements of §20.509 of this title (relating to Performance Reporting) relative to the evaluation of the awarded vendor's performance based on:

(1) information prepared by the agency in planning the procurement that assessed the need for the purchase together with the specifications for the good or service and the criteria to evaluate the responses resulting in an award and contract;

(2) compliance with the material terms of the contract;

(3) ability to correct instances of contractual non-compliance; and

(4) other evaluation criteria presented in the on-line vendor performance tracking system.

(c) It is the responsibility of state agencies to document the basis for agency decisions to depart from the requirements in the state procurement manual or contract management guide.

§20.182. Selection of Items for Development of Texas Uniform Standards and Specifications.

Items are selected for specification development by or through one or more of the following methods.

(1) Required by statute.

(A) School buses. Pursuant to Education Code, §34.002, the Texas Department of Public Safety, with advice from the Texas Education Agency, establishes safety standards for school buses used to transport students. Pursuant to Education Code, §34.001, specifications developed by the Texas Department of Public Safety in compliance with Transportation Code, §547.7015, shall be referenced in solicitations and made a part of any contract awarded by the comptroller as result of a requisition received from a school district pursuant to Local Government Code, §271.083. For the convenience of qualified purchasing entities the specifications shall be posted on the division's website.

(B) Prison-made products and raw materials. Pursuant to Government Code, Subtitle G, Subchapter B, §497.027, an article or product produced under Subchapter B must meet specifications established by the comptroller that are in effect when the article or product is produced.

(2) Requests from using agencies. If a using agency finds that it is having difficulty in obtaining a certain item to meet a particular requirement, then the agency can communicate this need to the division.

(3) Requests from purchasers. If a state agency purchaser is having difficulty in securing bids on a particular item in the absence of adequate uniform standards and specifications, the purchaser may request the division to investigate the feasibility of developing a uniform standard and specification to cover the purchase of this item.

§20.183. Development of Texas Uniform Standards and Specifications.

(a) Preparation of Texas Uniform Standards and Specifications.

(1) The procedure used in developing uniform standards and specifications includes consultation, research, collection, and evaluation of data, and preparation of the specification. The division consults with knowledgeable people in various state agencies, user advisory groups, purchasers, vendors, manufacturers, distributors, bidders, governmental and trade associations, colleges and universities, testing laboratories, and other experts.

(2) Uniform standards and specifications from federal, state, and local governments and standards agencies, such as ASTM, SAE, and others, and product literature from manufacturers, distributors, etc., are obtained, studied, and their contents evaluated.

(3) A proposed specification is then prepared by stipulating minimum requirements necessary to provide products of the level of quality required by various state agencies.

(4) This draft specification is then distributed to the individuals and groups initially contacted as well as other interested parties for their review, comments, and suggestions.

(5) Comments and suggestions received are reviewed, analyzed, and evaluated, and the proposed specification modified accordingly.

(6) If, as a result of this analysis and evaluation, major changes in the proposed specification are made, then a second proposed specification is prepared and distributed and the process outlined in paragraphs (4) and (5) of this subsection is followed.

(7) If no major change in the proposed specification is made, then the uniform standard and specification is finalized and distributed.

(8) Comments and suggestions received from the distribution of a second proposed specification are reviewed, analyzed, evaluated, and the process outlined in paragraphs (4) - (7) of this subsection is followed.

(9) This process is continued until a uniform standard and specification is developed that will provide the level of quality required by the state and that will provide competitive bidding.

(10) The agency user advisory groups provide the division with their individual requirements and otherwise assist in the preparation and development of specifications.

(b) Distribution of Texas Uniform Standards and Specifications. The initial distribution of newly adopted or prepared uniform standards and specifications is to state agencies, vendors/distributors and manufacturers contacted during the development phase of the uniform standard and specification and subsequently to others upon request.

(c) Approved products list.

(1) A manufacturer, vendor, or distributor may submit a product for inclusion in an established approved product list to the division, along with technical literature and product specifications. The product may then be tested and the results evaluated and compared with the minimum level of quality for the approved products list.

(2) A product can be removed from the approved products list if:

(A) the quality of a given product is decreased; or

(B) the minimum level of quality for the approved products list is increased in order to provide the quality of products required by state agencies.

§20.184. Requisitions and Specifications.

(a) Requisitions.

(1) A purchase is initiated by a state agency's submission of a requisition containing desired specifications and evaluation criteria either electronically or on a form provided or approved by the comptroller. The requisition must also include the agency's certification that funds are available for the purchase.

(2) Following receipt of a requisition and supporting documentation, the comptroller shall review the materials submitted, and shall advise the state agency of any additional documentation required in order for the comptroller to begin the procurement solicitation process. When the comptroller has received all required documentation from the state agency, the comptroller will verify same to the state agency, and will endeavor to complete the requested procurement within 90 days thereafter.

(3) The state agency is responsible for determining its need for a purchase and the comptroller may not question the agency's determination of need. However, the comptroller may require clarification of the specifications to foster open competition. If the agency's specifications unreasonably limit competition, the comptroller may require an additional written explanation.

(4) If the good or service for which the state agency has identified a need has been previously procured by any state agency, the state agency shall include in the documentation submitted to the comptroller a certification that it has reviewed and considered in its development of specifications and evaluation criteria, all vendor performance reports previously submitted by user agencies for all previous contractors who have provided such good or service to state agencies.

(b) Specifications.

(1) The comptroller develops standard specifications for a number of goods purchased by the state and provides agencies with a list of the goods covered by the standard specifications. If an agency submits a requisition with non-standard specifications when an applicable standard specification exists, it must include an explanation as to why the standard specification is not being used.

(2) If a state agency submits a requisition for the purchase of a product on the open market when an equivalent product is available for purchase under a term contract, it must include an acceptable explanation as to why the term contract product is not satisfactory.

(3) The comptroller will review the specifications and evaluation criteria submitted by a state agency. The comptroller will not significantly change specifications or evaluation criteria without written approval from the agency, but it may correct typographical errors if doing so will not significantly change the specifications. Incorrect, inadequate, or incomplete requisitions may be returned to the agency, with a written explanation for the return and the requirements for acceptable re-submission.

(4) The comptroller will normally specify delivery times that are standard in the industry. If a state agency requires shorter than standard delivery times, it must state the requirement in its requisition. If the delivery requirement can only be met by one vendor, written justification will be required. If an agency does not require early delivery but wishes to take advantage of it if available, the comptroller will state in the bid invitation that the ability to make early delivery may be a factor in making the award. In such cases, when it is to the state's advantage, the comptroller may award a contract to a bid other than the lowest priced bid after consulting with the agency. If the bid invitation contains no statement regarding early delivery, the comptroller may not consider early delivery in making an award.

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

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Don Neal
Chief Deputy General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

DIVISION 2. PROCUREMENT METHODS

34 TAC §§20.206 - 20.221

The Comptroller of Public Accounts proposes new §20.206, concerning procurement methods; §20.207, concerning competitive sealed bidding; §20.208, concerning competitive sealed proposals; §20.209, concerning proprietary purchases; §20.210, concerning emergency procurements; §20.211, concerning small purchases; §20.212, concerning reverse auction; §20.213, concerning internal repair procurements; §20.214, concerning notice and information posting requirements; §20.215, concerning posting time requirements; §20.216, concerning posting follow-up and record keeping; §20.217, concerning verification of use of best value standard; §20.218, concerning contract with value exceeding $5 million; §20.219, concerning award notification; §20.220, concerning term contracts; and §20.221, concerning special rules for contract awards requiring an open meeting.

The comptroller proposes to rename Chapter 20 Statewide Procurement and Support Services and rename Subchapter C Procurement Methods and Contract Formation. New §§20.206 - 221 will be part of Subchapter C, under new Division 2, Procurement Methods.

New §20.206 identifies the procurement methods available for the solicitation and procurement of goods and services under the State Purchasing and General Services Act, Government Code, Title 10, Subtitle D, et seq, and incorporates former §20.31(b) and (c) in the reorganization of Chapter 20.

New §20.207 incorporates former §20.35 and §20.36 in the reorganization of Chapter 20 and revises them to identify the current minimum requirements for bid submission, bid evaluation, and contract award.

New §20.208 incorporates former §20.37 in the reorganization of Chapter 20 and revises it to identify the current minimum requirements for using, soliciting, opening, negotiating and awarding contracts under a competitive sealed proposals procurement.

New §20.209 incorporates former §20.33(c) in the reorganization of Chapter 20 and revises it to refer to the comptroller instead of the commission.

New §20.210 incorporates former §20.208 in the reorganization of Chapter 20 and revises it to refer to the comptroller instead of the commission.

New §20.211 identifies requirements for purchases under $5,000.

New §20.212 incorporates former §20.51 in the reorganization of Chapter 20 and revises it to refer to the comptroller instead of the commission.

New §20.213 incorporates former §20.209 in the reorganization of Chapter 20.

New §20.214 incorporates former §20.204(b) and (c) in the reorganization of Chapter 20, revises them to refer to the comptroller instead of the commission, and identifies requirements for posting a solicitation for goods or services in excess of $25,000.

New §20.215 incorporates former §20.207 in the reorganization of Chapter 20 and revises it for clarity.

New §20.216 incorporates former §20.213 in the reorganization of Chapter 20 and revises a reference to procurement contract opportunity to be solicitation, which is a defined term in the chapter.

New §20.217 identifies requirements to comply with recently enacted legislation for contract awards.

New §20.218 identifies requirements to comply with recently enacted legislation for contract awards exceeding $5 million.

New §20.219 incorporates former §20.215 in the reorganization of Chapter 20.

New §20.220 incorporates former §20.40, paragraphs (1) and (3) in the reorganization of Chapter 20 and revises them to refer to the comptroller instead of the commission.

New §20.221 incorporates former §§20.381, 20.382, and 20.383 in the reorganization of Chapter 20 revises them to refer to the division instead of Texas Procurement and Support Services.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rules will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the comptroller's procedures for statewide procurement and support services. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the proposals may be submitted to Amy Comeaux, Statewide Procurement Division, at amy.comeaux@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposals in the *Texas Register.*

The new sections are proposed under Government Code, §§2155.0012, 2155.267, 2155.503, 2156.0012, 2156.010, 2156.124, 2156.126, and 2158.0031; Local Government Code, §271.082; and Education Code, §34.001.

The following statutes are affected by the new sections: Government Code, §§2155.061, 2155.062, 2155.063, 2155.064, 2155.065, 2155.067, 2155.074, 2155.0755, 2155.075, 2155.079, 2155.085, 2155.086, 2155.088, 2155.132, 2155.137, 2155.453, 2155.501, 2155.502, 2155.503, 2155.504, 2155.505, 2155.506, 2155.508, 2155.509, 2155.510, 2156.002, 2156.004, 2156.005, 2156.006, 2156.007, 2156.008, 2156.010, 2156.011, 2156.063, 2156.064, 2156.121, 2156.122, 2156.123, 2156.124, 2156.125, 2156.181, 2157.003, 2157.125, 2261.253, 2261.254, and 2261.255; and Local Government Code, §271.082; and Education Code, §34.001.

§20.206. Procurement Methods.

(a) To procure goods or services, a state agency may use the following procurement methods as further prescribed by this subchapter:

(1) competitive sealed bidding;

(2) competitive sealed proposals;

(3) proprietary purchases;

(4) emergency procurements;

(5) small purchases;

(6) requests for offers; or

(7) purchases by means of special contracting methods as otherwise specified in this subchapter.

(b) In addition to the methods described in subsection (a) of this section, a state agency may use any other method of procurement authorized by statute.

(c) Whenever possible, purchases are based on competitive bids.

(d) Negotiation of contracts, including price, is permitted for:

(1) purchases by means of competitive sealed proposals;

(2) proprietary purchases or purchases of items for which there is only one source of supply;

(3) emergency purchases when there is insufficient time to solicit bids; and

(4) proposed purchases in circumstances where the competitive solicitation has been advertised but the state agency has received only one acceptable bid, or no acceptable bids; provided, however, such negotiation may not result in a material change to the advertised specifications.

§20.207. Competitive Sealed Bidding.

(a) Bid submission.

(1) Prospective bidders may request specific bid invitations from the comptroller at any time prior to the bid due date and time.

(2) A bidder may withdraw its bid by written request at any time prior to the bid due date and time.

(3) A bid received after the bid due date and time established by the bid invitation is a late bid and will not be considered.

(4) A bid received which does not contain adequate bid identification information on the outside of the envelope will be opened to obtain such information and will then be processed as any other bid. If the incorrect information on the envelope causes the bid not to be considered in making an award, the bid will be considered invalid and rejected.

(5) Bids by facsimile are not allowed except under exceptional circumstances and with the written approval of the purchasing agency prior to the bid due date and time.

(6) An unsigned bid is not valid and will be disqualified.

(7) When formal bids are required, bids may not be taken or accepted by telephone.

(8) To claim a preference identified in Subchapter D, Division 2, of this chapter, a bidder shall mark the appropriate box on the preference form and provide sufficient documentation to demonstrate a determination that the bidder may receive the preference. If the appropriate box is not marked, a preference will not be granted unless other documents included in the bid provide sufficiently demonstrate that the bidder may receive the preference and is requesting the preference.

(9) If an error is discovered in a bid invitation, or agency requirements change prior to the opening of a bid, the comptroller will transmit an addendum correcting or changing the specifications to all bidders originally listed on the Centralized Master Bidder List for that bid invitation. Bids will not be rejected for failure to return the addendum with the bid, if the change is noted on the bid or the product or service specification would not be changed by the addendum.

(10) By signing and submitting a bid to the comptroller or to an agency acting under delegated purchasing authority, a bidder affirms that it has not given or offered any economic opportunity, employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the bid, and that it does not intend to give or offer any of the foregoing in the future. Signing a bid with a false statement shall void the bid and any resulting contract, and the bidder shall be removed from all bidders lists at the comptroller or at the agency acting under delegated purchasing authority.

(b) Bid evaluation.

(1) The comptroller may accept or reject any bid or any part of a bid or waive minor technicalities in a bid, if doing so would be in the state's best interest.

(2) A bid price may not be altered or amended after the bid due date and time except to correct mathematical errors in extension.

(3) No increase in price will be considered after the bid due date and time. A bidder may reduce its price provided it is the lowest and best bidder and is otherwise entitled to the award.

(4) Bid prices are considered firm for acceptance for 30 days from the bid due date and time for open market purchases and 60 days for term contracts, unless otherwise specified in the invitation for bids.

(5) A bid containing a self-evident error may be withdrawn by the bidder prior to an award.

(6) Bid prices which are subject to unlimited escalation will not be considered. A bidder may offer a predetermined limit of escalation in his bid and the bid will be evaluated on the basis of the full amount of the escalation.

(7) A bid containing a material failure to comply with the advertised specifications shall be rejected.

(8) All bids must be based on "F.O.B. destination" delivery terms unless otherwise specified.

(9) If requested in the invitation for bids, samples must be submitted or the bid will be rejected. A state agency may require samples when essential to the assessment of product quality during bid evaluation. A state agency is not required to return samples.

(10) When brand names are specified, bids on alternate brands will be considered if they otherwise meet specification requirements.

(11) Expedited payment discounts are acceptable but are not considered in making an award. All cash discounts offered will be taken if they are earned by the agency.

(12) No electrical item may be purchased unless the item meets applicable safety standards of federal and state law.

(c) Award.

(1) All awards shall be made to the bidder complying with the best value criteria used in the bid and conforming to the advertised product or service specifications.

(2) In case of tie bids which cannot be resolved by application of one or more preferences described in §20.306 of this title (relating to Preferences), an award shall be made by drawing lots.

§20.208. Competitive Sealed Proposals.

(a) Availability of method.

(1) The comptroller or other state agency may follow a procedure using competitive sealed proposals to acquire goods or services if the comptroller or agency determines that competitive sealed bidding and informal competitive bidding for the purchase or type of purchase are not practical or are disadvantageous to the state.

(2) A state agency shall send its proposal specifications and criteria to the division for approval or request the division to develop the proposal specifications and criteria.

(3) The division shall determine whether to delegate sole oversight of the acquisition to a state agency or to retain oversight of the procurement.

(b) Solicitation of proposals. The division or other state agency shall:

(1) solicit proposals under this subchapter by a request for proposals; and

(2) give public notice of a request for proposals in the manner provided for requests for sealed bids under this subchapter.

(c) Opening and filing of proposals; public inspection. The division or other state agency shall maintain a list of respondents received for each request for proposal.

(d) Negotiation of proposals.

(1) The division or other state agency may discuss acceptable or potentially acceptable proposals with offerors to assess an offeror's ability to meet the solicitation requirements. When the division is managing the request for proposals process, it shall invite a requisitioning agency to participate in discussions conducted under this section.

(2) After receiving a proposal but before making an award, the division or other state agency may permit the offeror to revise the proposal to obtain the best final offer.

(3) The division or other state agency may not disclose information derived from proposals submitted from competing offerors in conducting discussions under this section.

(4) The division or other state agency shall provide each offeror an equal opportunity to discuss and revise proposals.

(5) In accordance with Government Code, §2155.453, a state governmental entity that issues a request for proposals for technological products or services for homeland security or law enforcement purposes must allow a business entity to substitute the qualifications of its executive officers or managers for the qualifications required of the business entity in the request for proposals.

(e) Contract award.

(1) The division or other state agency shall make a written award of a contract to the offeror whose proposal offers the best value for the state, considering price, past vendor performance, vendor experience or demonstrated capability, and the evaluation factors in the request for proposals.

(2) The division or other state agency shall refuse all offers if none of the offers submitted is acceptable.

(3) The division or other state agency shall determine which proposal offers the best value for the state in accordance with Government Code, §§2155.074, 2155.075 and 2156.125, as applicable.

(4) The division or other state agency shall state in writing in the contract file the reasons for making an award.

(f) Release of respondent list. After a contract is awarded, the list of respondents submitting proposals for the solicitation shall be released upon request and in compliance with Government Code, Chapter 552.

(g) Guidelines. The comptroller may promulgate and maintain guidelines for the conduct of and review of procurement transactions conducted using competitive sealed proposals.

§20.209. Proprietary Purchases.

(a) If the division finds that a state agency has submitted specifications or conditions of purchase which are proprietary to one vendor and do not permit an equivalent good or service to be supplied, the division may require the state agency to provide written justification before processing the procurement. Within 10 days thereafter, it will notify the agency of the need for a written justification. An agency may submit a written justification along with its requisition if it chooses to do so.

(b) A written justification for the use of proprietary specifications or conditions shall:

(1) contain an explanation of the need for the specifications or conditions;

(2) state the reasons why any competing or equivalent products identified by the division are not satisfactory, addressing each such product individually;

(3) contain any other information requested by the division; and

(4) be signed by the agency head, the chairman of its governing body, or a person to whom such signature authority has been properly delegated in the agency's procurement plan, or in the case of an institution of higher education, by a person properly designated as a purchasing officer for the institution.

(c) When a state agency submits a written justification meeting the requirements of subsection (b) of this section, the division shall make the requested purchase.

(d) If a review of the state agency's proposed specifications or conditions by the division shows that competition will be unduly limited and are not proprietary to one vendor, the division shall inform the state agency of the limiting effect caused by the specification or condition and its possible economic effect.

§20.210. Emergency Procurements.

(a) Emergency procurement requirements over $25,000 must be posted to the ESBD, but the minimum posting times in this subchapter do not apply.

(b) In addition to the posting requirements for emergency procurements set forth in this subchapter, all other comptroller procedures governing emergency procurement requirements in §20.82 of this title (relating to Delegated Purchases) apply.

§20.211. Small Purchases.

For purchases of goods which the purchasing agency estimates to be of a total value of less than $5,000, the purchasing agency shall conduct such procurements in a manner consistent with the processes outlined in the state procurement manual and the contract management guide.

§20.212. Reverse Auction.

Pursuant to Government Code, §2155.062(a)(4) and (d), the comptroller may use the reverse auction procedure as a method of purchasing goods and services. In this competitive method of purchasing, bidding is a real time process lasting for a specified period of time, during which multiple suppliers anonymous to each other submit bids to provide the designated goods or services to an internet location.

§20.213. Internal Repair Procurements.

An internal repair is defined as a repair where the extent of the work cannot be determined until the equipment is disassembled. An internal repair must contain labor and may also include parts. Internal repairs over $25,000 must be posted to the ESBD, but the minimum posting times in this subchapter do not apply.

§20.214. Notice and Information Posting Requirements.

(a) Each state agency shall directly and electronically post its own notices or solicitation packages for procurement contract opportunities using the ESBD.

(b) Each state agency that issues a procurement contract solicitation estimated to exceed $25,000 in value shall post on the ESBD.

(1) Either the entire bid or proposal solicitation package or a notice that includes all information necessary to make a responsive bid, proposal, or other applicable expression of interest for the procurement contract, including the following minimum information required for each procurement as outlined in Government Code, §2155.083(g):

(A) a brief description of the goods or services to be procured and any applicable NIGP class and item code for the goods and services;

(B) the last date and time on which bids, proposals, or other applicable expressions of interest will be accepted;

(C) the estimated quantity of goods or services to be procured;

(D) the estimated date on which the goods or services to be procured will be needed; and

(E) the name, business mailing address, e-mail address, and business telephone number of the state agency employee a person may contact to inquire about all necessary information related to making a bid or proposal or other applicable expression of interest for the procurement contract.

(2) A notice when the procurement contract has been awarded or when the state agency has decided to not make the procurement.

(3) Any addendum to the original procurement solicitation must be posted no later than the next business day following its release to the public. The time and date for receiving solicitation responses should be changed to allow sufficient time for all recipients of the original procurement solicitation to receive and respond to the addendum prior to the time and date for receiving solicitation responses, but the posting times set forth in this subchapter do not apply for addendums (that is, an addendum is not necessarily required to be posted for the full posting period applicable to the original solicitation). Each state agency is responsible for posting notices of addendums, if applicable, to each procurement solicitation. The state agency is also responsible for posting solicitation cancellation notices on the ESBD.

(4) It is the responsibility of the potential bidder or respondent to review the ESBD or contact the state agency prior to the bid or posting closing date to determine if an addendum has been issued.

§20.215. Posting Time Requirements.

(a) Entire solicitation. If the state agency posts the entire solicitation package, including attachments, the solicitation must be posted for the latest of:

(1) 14 calendar days after the date the solicitation package is first posted; or

(2) the date the state agency will no longer accept bids, proposals, or other applicable expressions of interest for the procurement.

(b) Notices. If documents or attachments related to the solicitation must be obtained from another source, a notice of solicitation must be posted for the latest of:

(1) 21 calendar days after the date the notice is first posted; or

(2) the date the state agency will no longer accept bids, proposals, or other applicable expressions of interest for the procurement.

(c) Cancellation. If the state agency decides not to make the procurement, the state agency must amend the posting to indicate the effective date of the cancellation within two business days of canceling the solicitation.

(d) A state agency may not award a contract and shall continue to accept bids or proposals or other applicable expressions of interest for the solicitation for at least 21 calendar days after the date the state agency first posted notice of the solicitation or 14 calendar days after the date the state agency first posted the entire bid or proposal solicitation package.

(e) Contract void. A contract award is void if made by a state agency in violation of the applicable minimum required posting time or if no ESBD posting was made.

§20.216. Posting Follow-up and Record Keeping.

(a) A copy of the solicitation posting will automatically be sent electronically to the registered agent's e-mail address, if an e-mail address was provided on the user registration form. If the registered agent does not have e-mail access, it is the responsibility of the registered agent to use the print features of the Internet browser software to produce a hard copy of the posting for permanent record keeping as part of the contract file.

(b) The ESBD will automatically purge postings according to the bid opening date entered by the registered agent. Each state agency

is responsible for ensuring the procurement contract solicitation remains posted for the minimum number of days, as set forth in Government Code, §2155.083 and these rules.

§20.217. Verification of Use of Best Value Standards.

(a) The contract manager or procurement director of each state agency shall:

(1) approve each state agency contract for which the agency is required to purchase goods or services using the best value standard;

(2) ensure that, for each contract, the agency documents the best value standard used for the contract;

(3) acknowledge in writing that the agency complied with the agency's and comptroller's contract management guide and the state procurement manual in the purchase; and

(4) ensure that the state agency shall evaluate the contractor's performance based on:

(A) information prepared by the agency in planning the procurement that assessed the need for the purchase together with the specifications for the good or service and the criteria to evaluate the responses resulting in an award and contract;

(B) compliance with the material terms of the contract;

(C) ability to correct instances of contractual non-compliance; and

(D) other evaluation criteria presented in the on-line vendor performance tracking system.

(b) In determining which bidder is offering the best value, in addition to price, the state agency may consider and evaluate the factors set out in Government Code, Title 10, Subtitle D, Subchapter A, §§2155.074, 2155.075, 2156.007, 2157.003 and 2157.125, and all other factors comprising the best value criteria as may be set forth in the solicitation.

§20.218. Contract With Value Exceeding $5 Million.

For each state agency contract for the purchase of goods or services that has a value exceeding $5 million, the contract management office or procurement director of the agency must:

(1) verify in writing that the solicitation and purchasing methods and contractor selection process comply with state law and agency policy; and

(2) submit to the governing body of the agency, or governing official of the agency if the agency is not governed by a multimember governing body, information on any potential issue that may arise in the solicitation, purchasing, or contractor selection process.

§20.219. Award Notification.

(a) Each state agency's registered agent must record the action resulting from the posting of each procurement contract solicitation into the ESBD using the prescribed form or electronic file transfer. This includes contracts awarded and procurement contract opportunities canceled by the state agency.

(b) The procurement contract award notice shall include the following minimum information:

(1) agency name, mailing and physical address, and contact name;

(2) purchase requisition number for procurement contract solicitation;

(3) contract award recipient information to include company name, mailing address, and the comptroller's historically underutilized business certification status, if applicable; and

(4) dollar amount of award.

(c) Cancellation notices will include the following minimum information:

(1) agency name, business address, and contact name;

(2) purchase requisition number; and

(3) reason for cancellation.

(d) Upon posting of the contract award notification information in the form, the registered agent will receive an e-mail notification of the posting.

§20.220. Term Contracts.

The comptroller enters into term contracts for the purchase or lease of goods or services used in large quantities by several state agencies. The term of the contract is determined by the comptroller.

(1) Bid invitations.

(A) The comptroller maintains records of the quantities and/or dollar volumes purchased under term contracts during the previous year, and includes this information in bid invitations. Term contracts are established for estimated quantities only, however, and do not guarantee that the state will order any given amount during the contract period.

(B) Term contracts may be either firm price or firm fixed price contracts with escalation and de-escalation.

(2) Awards.

(A) The comptroller will notify a successful bidder of the acceptance of its bid by issuing a notice of award. The successful bidder must review the notice of award and notify the comptroller in writing within 5 days of any error requiring correction.

(B) Performance bonds may be required for each award exceeding $100,000.

(3) Delivery requirements.

(A) All items shipped by a contractor must be new (unless otherwise specified in a purchase document) and received by the agency in first-class condition within the specified time.

(B) All merchandise shipped against the contract order during the term of the contract must be as the contractor originally quoted. If items become unavailable during the term of a contract, the comptroller may require the contractor to furnish acceptable substitutes.

§20.221. Special Rules for Contract Awards Requiring an Open Meeting.

(a) The purpose of this section is to provide for the efficient and effective administration of the provisions of the Government Code relating to certain contract awards by the division in compliance with Government Code, §2155.086.

(b) Except as otherwise provided, this section applies to the award of a contract by the division that:

(1) relates to the powers and duties transferred to the comptroller under Government Code, §2151.004(d);

(2) is reasonably expected by the division at the time of the award to have a value of $100,000 or more over the life of the contract; and

(3) is evaluated based wholly or partly on best value factors other than cost.

(c) This section does not apply to:

(1) the award of a contract by the chief clerk on behalf of divisions of the comptroller other than the division, or for multiple divisions of the comptroller that also include the division, that do not relate to the powers and duties transferred to the comptroller under Government Code, §2151.004(d);

(2) the award of a contract by any state agency, local government or any other authorized entity under a statewide or master contract established by the division, including without limitation, a state term contract or Texas multiple award schedule contract;

(3) any part of the contracting process other than the award, including without limitation planning, budgeting, solicitation, pre-response conference, respondent presentation, evaluation, development of staff or evaluation committee recommendations, negotiation, and signature;

(4) a renewal, extension, or amendment of a contract provided for in the written solicitation for the original contract;

(5) an emergency purchase or other contract award for which delay would create a hazard to life, health, safety, welfare, or property or would cause undue additional cost to the state;

(6) the award of a contract by any state agency, local government or any other authorized entity under a contract that is not subject to or otherwise exempt from submission to, delegation by or other authority of the division; or

(7) reverse auctions or any other purchase method that does not involve consideration and evaluation, prior to contract award, by the division on best value evaluation factors other than cost.

(d) As used in this section, the chief clerk of the comptroller includes the chief clerk or his or her designee.

(e) To award a contract to which this section applies, the chief clerk shall chair and conduct a public meeting to make the contract award. The chief clerk shall determine the time and location for the meeting. The meeting must comply with the applicable provisions of Government Code, Chapter 551, including requirements relating to posting notice of the meeting. The division shall post notice of the meeting on its website and in the state business daily. The office of the attorney general shall advise the chief clerk and the division on the applicable provisions of Chapter 551 upon request.

(f) Before the open meeting, the chief clerk may review any written recommendations for the proposed contract award submitted by the staff of the division or by an evaluation committee established by the division for the proposed contract. The chief clerk may discuss and review these written recommendations for proposed contract award with the staff or evaluation committee prior to the open meeting and may request that additional or clarifying written information be obtained for presentation in the public meeting. The chief clerk shall make the staff's or committee's final written recommendations available to the public at the meeting.

(g) A contract awarded by the chief clerk under this section is not considered final and does not bind the state until all negotiations are completed, if applicable, and all parties to the contract have signed the final contract.

(h) The division shall post notice of a contract award made in an open meeting under this section on its website and in the state business daily.

(i) The division shall post the text of a contract awarded in an open meeting under this section on its website and in the state business daily, except for information in a contract that is not subject to disclosure under Government Code, Chapter 552. Information that is not subject to disclosure under Chapter 552 shall be referenced in an appendix that generally describes the information without disclosing the specific content of the information.

(j) In making the determination of whether a contract is reasonably expected to have a value of $100,000 over the life of the contract, the division may review all available information, including available renewals or extensions, pricing or quantity options, purchase requisitions, estimated budgets, legislative appropriations, market research, previous similar contracts, total previous agency purchase orders under a statewide contract and other pertinent information. For open market awards where the division is requested to evaluate and award a purchase order for an agency or other authorized entity, the division may consider an agency's expectation of contract value along with other available information.

(k) The emergency standard is a purchase or other contract award for which delay would create a hazard to life, health, safety, welfare, or property or would cause undue additional cost to the state. An agency's or other authorized entity's documentation to support a request for an emergency contract award by the division is the same documentation as that which would reasonably support an agency's own emergency purchase.

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

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Don Neal
Chief Deputy General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

DIVISION 3. SPECIAL CONTRACTING METHODS

34 TAC §§20.231 - 20.238

The Comptroller of Public Accounts proposes new §20.231, concerning multiple award contract procedure; §20.232, concerning multiple award schedule; §20.233, concerning multiple award schedule contract purchases exceeding $25,000; §20.234, concerning lease-purchase contracts; 20.235, concerning purchase of motor vehicles; §20.236, concerning buying under contract established by an agency other than comptroller; §20.237, concerning purchasing from interstate compacts and cooperative agreements; and §20.238, concerning Texas department of criminal justice purchases.

The comptroller proposes to rename Chapter 20 Statewide Procurement and Support Services and rename Subchapter C Procurement Methods and Contract Formation. New §§20.231 - 20.238 will be part of Subchapter C, under new Division 3, Special Contracting Methods.

New §20.231 incorporates former §20.46 in the reorganization of Chapter 20, revises it for clarity and to refer to the comptroller instead of the commission.

New §20.232 incorporates former §20.47 in the reorganization of Chapter 20 and revises it to refer to the comptroller instead of the commission.

New §20.233 incorporates former §20.210 in the reorganization of Chapter 20.

New §20.234 incorporates former §20.33(d) in the reorganization of Chapter 20 and revises it to refer to the division instead of the commission.

New §20.235 incorporates former §20.55 in the reorganization of Chapter 20, revises it to refer to the division instead of the commission, and includes a new subsection (e) to include a statutory requirement.

New §20.236 incorporates former §20.125 in the reorganization of Chapter 20, revises to remove references to the Texas Building and Procurement Commission and replaces them with references to the comptroller or division as appropriate.

New §20.237 incorporates former §20.126 in the reorganization of Chapter 20, revises it to refer to the comptroller instead of the TBPC, and includes a process for the submission, review, and approval of a compact or cooperative purchasing agreement.

New §20.238 incorporates former §20.43 in the reorganization of Chapter 20 and revises it to refer to the comptroller instead of the commission.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rules will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the comptroller's procedures for statewide procurement and support services. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the proposals may be submitted to Amy Comeaux, Statewide Procurement Division, at amy.comeaux@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposals in the *Texas Register.*

The new sections are proposed under Government Code, §§2155.0012, 2155.267, 2155.503, 2156.0012, 2156.010, 2156.124, 2156.126, and 2158.0031; Local Government Code, §271.082; and Education Code, §34.001.

The following statutes are affected by the new sections: Government Code, §§2155.061, 2155.062, 2155.063, 2155.064, 2155.065, 2155.067, 2155.074, 2155.0755, 2155.075, 2155.079, 2155.085, 2155.086, 2155.088, 2155.132, 2155.137, 2155.453, 2155.501, 2155.502, 2155.503, 2155.504, 2155.505, 2155.506, 2155.508, 2155.509, 2155.510, 2156.002, 2156.004, 2156.005, 2156.006, 2156.007, 2156.008, 2156.010, 2156.011, 2156.063, 2156.064, 2156.121, 2156.122, 2156.123, 2156.124, 2156.125, 2156.181, 2157.003, 2157.125, 2261.253, 2261.254, and 2261.255; and Local Government Code, §271.082; and Education Code, §34.001.

§20.231. Multiple Award Contracts Procedure.

(a) The comptroller or a state agency may use the multiple award contract procedure only after the director or the agency's purchasing director has made a written determination that its use is in the best interest of the state. In arriving at a determination, the director or the agency will consider the following factors:

(1) the quality, availability, and reliability of the supplies, materials, equipment, or service and their adaptability to the particular use required;

(2) the ability, capacity, and skill of the bidder;

(3) the sufficiency of the bidder's financial resources;

(4) the bidder's ability to provide maintenance, repair parts, and service;

(5) the compatibility with existing equipment;

(6) the need for flexibility in evaluating new products on a large scale before becoming contractually committed for all use; and

(7) any other relevant factors.

(b) When the director or procuring state agency's purchasing director finds that one or more of the above factors is important to the contract and that objective specifications for those factors cannot be prepared, the director or agency's purchasing director may determine that the multiple award contract procedure will serve the best interest of the state.

(c) Bids on multiple award invitations will be evaluated as are other bids under §20.207(b) of this title (relating to Competitive Sealed Bidding), except that more than one award may be made. The basis for determining awards shall be reasonably related to the factors relied upon in using the multiple award contract procedure and shall be disclosed in the bid invitation.

§20.232. Multiple Award Schedule.

(a) Pursuant to Government Code, §2155.502, the comptroller will develop a schedule of multiple award contracts.

(b) All contracts on schedule shall meet the following standards:

(1) have been previously awarded using a competitive process by the federal government or any other governmental entity in any state;

(2) have agreed to the State of Texas General Terms and Conditions, including rules adopted by the comptroller;

(3) comply with all applicable state and federal procurement requirements; and

(4) any other applicable federal requirements.

(c) The director is authorized to take actions necessary to implement this section.

(d) Information on how to register for or use this schedule is to be listed on the comptroller website.

(e) The comptroller may collect a sales rebate from a vendor under a contract developed as a multiple award schedule. The rebate shall be based on a percentage of a vendor's quarterly sales and shall not exceed the current Industrial Fund Fee (IFF) assessed by the Federal General Services Administration (GSA).

(f) If a purchase resulting from the rebate is made in whole or in part with federal funds, the appropriate portion of the rebate is to be reported to the purchasing agency for reporting and reconciliation purposes with the appropriate federal funding agency.

§20.233. Multiple Award Schedule Contract Purchases Exceeding $25,000.

All multiple award schedule contract purchases with a total value exceeding $25,000 must be posted on the ESBD after the purchase order has been placed. The minimum posting times in this subchapter do not apply.

§20.234. Lease-Purchase Contracts.

(a) An agency may acquire capital equipment by lease-purchase if it is cost effective.

(b) If a proposed lease purchase is for information resources technologies, as defined in Government Code, Title 10, Chapter 2054, Subchapter A, the requisition must include written evidence that the Department of Information Resources has approved the agency's biennial operating plan. For other items, the division will determine the cost effectiveness of a lease purchase. To establish cost effectiveness, the requisitioning agency should submit the following information:

(1) anticipated interest charges over the life of the contract;

(2) anticipated cost savings which would result from outright purchase;

(3) an affirmative statement that the agency reasonably expects to be able to make payments beyond the current biennium without requiring an increase in appropriations;

(4) any information requested by the comptroller; and

(5) any other information the agency considers relevant.

§20.235. Purchase of Motor Vehicles.

(a) A state agency may not purchase or lease a vehicle designed or used primarily for the transportation of persons, including a station wagon, that has a wheel base longer than 113 inches or that has more than 160 SAE net horsepower, except that the vehicle may have a wheel base of up to 116 inches or SAE net horsepower of up to 280 if the vehicle will be converted so that it is capable of using compressed natural gas or another alternative fuel that results in comparably lower emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, or particulates. The wheel base and horsepower limitations prescribed by this subsection do not apply to the purchase or lease of a vehicle to be used primarily for criminal law enforcement or a bus, motorcycle, pickup, van, truck, three-wheel vehicle, tractor, or ambulance.

(b) Except as provided in subsections (c) and (d) of this section, after September 1, 1991, no motor vehicle may be purchased or leased for a state agency operating a fleet of more than 15 vehicles, excluding law enforcement and emergency vehicles, unless that vehicle is an alternative fuel vehicle.

(c) Requisitions for purchase or lease of vehicles after September 1, 1991, to a state agency operating a fleet of more than 15 vehicles, excluding law enforcement or emergency vehicles, will not be processed by the comptroller unless the requisition specifies an alternative fuel vehicle, or is accompanied by a request for waiver in accordance with §20.438 of this title (relating to Effective Waiver), or a current and valid waiver issued under that section is on file with the comptroller. If the requisition specifies an alternative fuel vehicle as a result of a conversion, it must contain certification as to the anticipated time after delivery that the conversion will be completed. The conversion must be completed prior to the vehicle being placed in service, unless hardship would result. In the case of potential undue hardship, the comptroller may approve use of the vehicle for one or more periods of 90 days following delivery before it is converted. A request for waiver submitted with a requisition will be referred to the division travel and transportation staff and will be granted or denied in accordance with §20.438 of this title.

(d) If a waiver is granted or is on file, the comptroller will process the purchase requisition without undue delay. If a waiver request is denied, the comptroller will return the requisition to the agency without further processing.

(e) In accordance with Government Code, § 2158.0031, a state agency authorized to purchase passenger vehicles or other ground transportation vehicles for general use shall purchase economical, fuel-efficient vehicles assembled in the United States unless such a purchase would have a significant detrimental effect on the use to which the vehicles will be put.

§20.236. Buying Under Contract Established by an Agency other Than Comptroller.

(a) A state agency may purchase goods or services under a contract made by another state agency other than the comptroller by complying with this rule.

(b) Before making a particular purchase from a contract made by another state agency, the requesting state agency must notify the division in writing that the purchase is being considered. The notification must be signed by the agency's purchasing director and include a confirmation that a comptroller contract does not exist for similar goods or services. The agency notification should also disclose the terms of the other agency contract and capabilities of the vendor. The agency notification should include a justification that addresses how using the other agency contract will be more advantageous than creating a new contract. Relevant factors that may be considered in the justification are reduced administrative costs, increased responsiveness, and aggregate purchasing power, among others.

(c) The authority to authorize a purchase under a contract made by another state agency other than the comptroller resides with the director. If the director determines that a lower price and overall best value is available through the comptroller or the goods or services are already available through a contract administered by the comptroller, it will so inform the requesting agency after receipt of the notification. Upon approval to use the other contract, the requesting agency shall utilize established purchasing procedures for the procurement.

(d) When a contract created by another agency fulfills an unmet need for more than one agency, the director may endorse the contract of the other agency as a comptroller contract, and make it generally available to state agencies and other qualified ordering entities as appropriate.

§20.237. Purchasing from Interstate Compacts and Cooperative Agreements.

(a) Pursuant to Government Code, §2156.181, the comptroller may enter into compacts or cooperative purchasing agreements directly with one or more state governments, agencies of other states, or other governmental entities, or may participate in, sponsor, or administer a cooperative purchasing agreement through an entity that facilitates those agreements for the purchase of goods or services if the comptroller determines that the agreement would be in the best interest of the state.

(b) In order for a compact or cooperative purchasing agreement to be considered for execution by the comptroller, a state agency shall submit a request to the comptroller that includes:

(1) a copy of the compact or the agreement;

(2) documentation identifying the procurement process for the requested contract;

(3) a needs assessment by the state agency identifying the goods or services that the state agency intends to purchase; and

(4) the evaluation criteria supporting the determination that the agreement provides the best value to the state or state agency for the needed goods and services.

(c) Before submitting the compact or cooperative purchasing agreement to the comptroller, the director shall review the agreement and prepare a recommendation after considering:

(1) the level of competition in the procurement process for the agreement;

(2) the benefits and advantages to the state agency and the state by executing the agreement;

(3) the costs imposed by the agreement including any fees imposed by the agreement; and

(4) whether the agreement provides the best value to the state compared to other procurement options available to the state.

(d) Before entering into such compacts or cooperative purchasing agreements, the director shall present the proposal and recommendation to the comptroller for approval.

§20.238. Texas Department of Criminal Justice Purchases.

(a) Pursuant to Government Code, §2155.065, the comptroller is authorized to make contracts for the purchase of goods and services from the Texas Department of Criminal Justice (TDCJ) for use by other qualified ordering entities. The commission may notify agencies of the availability of TDCJ-produced goods and services by issuing catalog pages listing the approved items in a manner suited to the product available for purchase.

(b) State agencies must purchase such items from TDCJ unless a written waiver has been secured from TDCJ.

(c) Orders for such items will be placed with TDCJ in a manner mutually agreed upon. For purchases within an agency's delegated authority, items not on contract may be ordered directly from TDCJ based on formal or informal quotations as appropriate for the value of the purchase.

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

Filed with the Office of the Secretary of State on October 26, 2016.

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Don Neal
Chief Deputy General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: December 4, 2016
For further information, please call: (512) 475-0387

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SUBCHAPTER D. SOCIO-ECONOMIC PROGRAM

DIVISION 1. HISTORICALLY UNDERUTILIZED BUSINESSES

34 TAC §§20.281 - 20.298

The Comptroller of Public Accounts proposes new §20.281, concerning policy and purpose; §20.282, concerning definitions; §20.283, concerning evaluation of active participation in the control, operation, and management of entities; §20.284, concerning statewide annual HUB utilization goals; §20.285, concerning subcontracts; §20.286, concerning state agency planning responsibilities; §20.287, concerning state agency reporting requirements; §20.288, concerning certification process; §20.289, concerning protests; §20.290, concerning recertification; §20.291, concerning revocation; §20.292, concerning certification and compliance reviews; §20.293; concerning Texas historically underutilized business certification directory; §20.294, concerning graduation procedures; §20.295, concerning program review; §20.296, concerning HUB coordinator responsibilities; §20.297, concerning HUB forum programs for state agencies; and §20.298, concerning mentor-protégé program.

The comptroller proposes to rename Chapter 20 Statewide Procurement and Support Services and rename Subchapter D Socioeconomic Program. New §§20.281 - 20.298 will be part of Subchapter D, under new Division 1, Historically Underutilized Businesses.

New §20.281 incorporates the provisions of former §20.10 in the reorganization of Chapter 20.

New §20.282 incorporates the provisions of former §20.11 in the reorganization of Chapter 20 and revises it to clarify state agency instead of agency.

New §20.283 incorporates the provisions of former §20.12 in the reorganization of Chapter 20.

New §20.284 incorporates the provisions of former §20.13 in the reorganization of Chapter 20 and revises it to clarify state agency instead of agency.

New §20.285 incorporates the provisions of former §20.14 in the reorganization of Chapter 20 and revises it to clarify state agency instead of agency.

New §20.286 incorporates the provisions of former §20.15 in the reorganization of Chapter 20 and revises it to clarify state agency instead of agency.

New §20.287 incorporates the provisions of former §20.16 in the reorganization of Chapter 20 and revises it to clarify state agency instead of agency.

New §20.288 incorporates the provisions of former §20.17 in the reorganization of Chapter 20 and revises it to clarify state agency instead of agency.

New §20.289 incorporates the provisions of former §20.18 in the reorganization of Chapter 20.

New §20.290 incorporates the provisions of former §20.19 in the reorganization of Chapter 20.

New §20.291 incorporates the provisions of former §20.20 in the reorganization of Chapter 20.

New §20.292 incorporates the provisions of former §20.21 in the reorganization of Chapter 20.

New §20.293 incorporates the provisions of former §20.22 in the reorganization of Chapter 20.

New §20.294 incorporates the provisions of former §20.23 in the reorganization of Chapter 20 and revises it to clarify state agency instead of agency.

New §20.295 incorporates the provisions of former §20.24 in the reorganization of Chapter 20.

New §20.296 incorporates the provisions of former §20.26 in the reorganization of Chapter 20 and revises it to clarify state agency instead of agency.

New §20.297 incorporates the provisions of former §20.27 in the reorganization of Chapter 20 and revises it to clarify state agency instead of agency.

New §20.298 incorporates the provisions of former §20.28 in the reorganization of Chapter 20 and revises it to clarify state agency instead of agency.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rules will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the comptroller's procedures for statewide procurement and support services. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the proposed rules may be submitted to Amy Comeaux, Statewide Procurement Division, at amy.comeaux@cpa.texas.gov or at P.O. Box 13528 Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposals in the *Texas Register.*

The new sections are proposed under Government Code, §2161.0012 and §2161.002(c).

The following statutes are affected by the new sections: Government Code, Chapter 2161, §§2161.0011, 2161.002, 2161.0015, 2161.004, 2161.061, 2161.062, 2161.065, 2161.181, and 2161.252.

§20.281. Policy and Purpose.

It is the policy of the comptroller to encourage the use of historically underutilized businesses (HUBs) by state agencies and to assist agencies in the implementation of this policy through race, ethnic, and gender-neutral means. The purpose of the HUB program is to promote full and equal business opportunities for all businesses in an effort to remedy disparity in state procurement and contracting in accordance with the HUB goals specified in the State of Texas Disparity Study. This subchapter (relating to the Historically Underutilized Businesses) describes the minimum steps and requirements to be undertaken by the comptroller and state agencies to fulfill the state's HUB policy and attain aspirational goals recommended by the Texas Disparity Study.

§20.282. Definitions.

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

(1) Applicant--A corporation, sole-proprietorship, partnership, joint venture, limited liability company, or supplier that applies to the comptroller for certification as an historically underutilized business.

(2) Application--The comptroller's form for applicants to request certification as an historically underutilized business.

(3) Commodities--Any tangible good provided by a contractor to the state.

(4) Comptroller--The office of the Texas Comptroller of Public Accounts.

(5) Contractor--Any vendor or supplier of commodities or services to a state agency under a purchase order contract or other state contract. A prime contractor is the lead contractor under a state contract.

(6) Directory--The Texas Certified Historically Underutilized Business Directory.

(7) Disparity study--The State of Texas Disparity Study - 2009, conducted by MGT of America, Inc., dated March 30, 2010, or any updates of the study that are prepared on behalf of the state as provided by Government Code, §2161.002(c).

(8) Economically disadvantaged person--An eligible HUB owner (as defined in paragraph (19) of this section) whose business has not exceeded the graduation size standards according to the comptroller's graduation procedures in §20.294 of this title (relating to Graduation Procedures).

(9) Forum--A collaborative effort between state agencies and potential contractors to provide information and training regarding procurement opportunities.

(10) Graduation--When a certified HUB exceeds the comptroller's size standard for HUB certification.

(11) Historically Underutilized Business (HUB)--A business outlined in subparagraphs (A) - (F) of this paragraph that is certified by the State of Texas and has not exceeded the size standards established by §20.294 of this title with its principal place of business in Texas (as defined in paragraph (21) of this section):

(A) a corporation formed for the purpose of making a profit in which at least 51% of all classes of the shares of stock or other equitable securities are owned by one or more persons described by paragraph (19)(C) of this section;

(B) a sole proprietorship created for the purpose of making a profit that is 100% owned, operated, and controlled by a person described by paragraph (19)(C) of this section;

(C) a partnership formed for the purpose of making a profit in which 51% of the assets and interest in the partnership is owned by one or more persons who are described by paragraph (19)(C) of this section;

(D) a joint venture in which each entity in the joint venture is a HUB under this paragraph;

(E) a supplier contract between a HUB under this paragraph and a prime contractor under which the HUB is directly involved in the manufacture or distribution of the supplies or materials or otherwise warehouses and ships the supplies; or

(F) a business other than described in subparagraphs (B), (D), and (E) of this paragraph, which is formed for the purpose of making a profit and is otherwise a legally recognized business organization under the laws of the State of Texas, provided that at least 51% of the assets and 51% of any classes of stock and equitable securi-

ties are owned by one or more persons described by paragraph (19)(C) of this section.

(12) Historically Underutilized Business (HUB) coordinator--The staff member designated by state agencies with more than $10 million in biennial budget. The position of coordinator must be at least equal to the procurement director or may be the procurement director.

(13) HUB report--A fiscal year semi-annual and annual report of the state's total expenditures, contract awards and payments made to certified HUBs.

(14) HUB business plan--A written plan developed by state agencies for increasing HUB utilization required as part of the state agency's strategic plan, as required by Government Code, §2161.123.

(15) HUB subcontracting plan--Written documentation regarding the use of subcontractors, which is required to be submitted with all responses to state agency contracts with an expected value of $100,000 or more where subcontracting opportunities have been determined by the state agency to be probable. The HUB subcontracting plan subsequently becomes a provision of the awarded contract, and shall be monitored for compliance by the state agency during the term of the contract.

(16) Mentor-Protégé Program--A program designed by the comptroller to assist agencies in identifying prime contractors and HUBs to foster long term relationships and for potential long-term contractual relationships. Each state agency required to have a HUB coordinator is required to implement the Mentor-Protégé Program in accordance with §20.298 of this title (relating to Mentor-Protégé Program).

(17) Non-treasury funds--Funds that are not state funds subject to the custody and control of the comptroller and available for appropriation by the legislature.

(18) Other services--All services other than construction and professional services, including consulting services subject to Government Code, Chapter 2254, Subchapter B.

(19) Owner or qualifying owner--A natural person or persons who:

(A) are residents of the State of Texas as that term is defined in paragraph (23) of this section;

(B) have a proportionate interest and demonstrate active participation in the control, operation, and management of the entities' affairs; and

(C) are economically disadvantaged because of their identification as members of the following groups:

(i) Black Americans, which includes persons having origins in any of the Black racial groups of Africa;

(ii) Hispanic Americans, which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) American Women, which includes all women of any ethnicity except those specified in clauses (i), (ii), (iv), and (v) of this subparagraph;

(iv) Asian Pacific Americans, which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, the Northern Marianas, and Subcontinent Asian Americans which includes persons whose origins are from India, Pakistan, Bangladesh, Sri Lanka, Bhutan or Nepal;

(v) Native Americans, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians; and

(vi) Veterans as defined by 38 U.S.C. §101(2) who have suffered at least a 20% service-connected disability as defined by 38 U.S.C. §101(16) who are not Black Americans, Hispanic Americans, American Women, Asian Pacific Americans, or Native Americans.

(20) Person or natural person--A human being who is a U.S. citizen, born or naturalized, or a human being who is not a U.S. citizen, but is a veteran as defined by 38 U.S.C. §101(2) who has suffered at least a 20% service-connected disability as defined by 38 U.S.C. §101(16).

(21) Principal place of business--The location where the qualifying owner or owners (as defined in paragraph (19) of this section) of the business direct, control, and coordinate the business's daily operations and activities.

(22) Professional services--Services of certain licensed or registered professions that must be purchased by state agencies under Government Code, Chapter 2254, Subchapter A.

(23) Resident of the State of Texas--Qualifying owners are considered residents of the state if the owners:

(A) physically reside in the state for a period of not less than 12 consecutive months prior to submitting an application for HUB certification, and list Texas as their residency in their most recent tax return submitted to the U.S. Internal Revenue Service, or;

(B) have established, to the satisfaction of the comptroller, a Texas domicile for a period of time sufficient to demonstrate their intention to permanently reside in the state consistently over a substantial period of time.

(24) Respondent--A person that submits a response.

(25) Response--A submission made in answer to an invitation for bid, request for proposal, or other purchase solicitation document, which may take the form of a bid, proposal, offer, or other applicable expression of interest.

(26) SBA--The U.S. Small Business Administration.

(27) Subcontractor--As defined by Government Code, §2251.001, this is a person who contracts with a prime contractor to work or contribute toward completing work for a governmental entity.

(28) Subcontractor funds--Payments made to any subcontractor by a prime contractor or supplier under contract with the state.

(29) Size standards--Graduation thresholds established by the HUB program consistent with the comptroller's rules which are based on the U.S. Small Business Administration's size standards, and based on the North American Industry Classification System codes. These may also be used to determine eligibility for HUB registration.

(30) Term contract--A statewide contract established by the comptroller as a supply source for user entities for specific commodities or services.

(31) Treasury funds--State funds subject to the custody and control of the comptroller and available for appropriation by the legislature.

(32) USAS--Uniform Statewide Accounting System for the State of Texas.

(33) Vendor Identification Number (VID)--A 13-digit identification number used in state government to identify the bidder

or business for payment or award of contracts, certification as a HUB, and registration on the bidders list.

(34) Work--Providing goods or performing services on behalf of a governmental entity pursuant to a contract.

(35) Working day--Normal business day of a state agency, not including weekends, federal or state holidays, or days the state agency is declared closed by its executive officer.

§20.283. Evaluation of Active Participation in the Control, Operation, and Management of Entities.

(a) In determining the extent of "active participation in the control, operation and management" necessary for qualification as a HUB, the comptroller may consider all relevant evidence. In considering and applying the factors set forth in paragraphs (1) - (10) of this subsection, the comptroller will consider actual roles and responsibilities of the eligible owners, rather than titles or statements of intention regarding the owners' role. Factors which may be considered include, but are not limited to:

(1) appearance and relative scope of responsibility of HUB-eligible owners in articles of incorporation or partnership formation documents;

(2) duties and rights of shareholders or partners relative to operational decisions affecting the short term and long term goals of the business;

(3) any restrictive language in articles of incorporation or partnership agreements applicable to HUB eligible owner;

(4) whether any licenses, certificates, or permits required to operate the business are held by or in the name of the HUB eligible owner, and whether the eligible owner is qualified to hold such licenses or permits pursuant to applicable laws and regulations;

(5) the percentage of profit and/or risk available to the HUB eligible owner under the corporate or partnership agreements;

(6) ability of other owners or partners to dilute either the ownership percentage or operational powers of the HUB eligible owner;

(7) whether the HUB eligible owner has full time employment elsewhere that might conflict with full participation in operation of the business;

(8) the percentage of government versus non-government contracts performed by the business where the HUB eligible owner actively participates in the bidding of the contract or the performance of the work;

(9) the period of time a HUB eligible owner participated in the active management and operation of the business prior to the business seeking HUB status; and

(10) whether and to what extent the HUB business shares management, board members, partners, employees, or other resources with another business in amounts or ways which might indicate that they are related or affiliated businesses.

(b) The comptroller may request any additional information it considers necessary to evaluate any or all of the factors in subsection (a)(1) - (10) of this section prior to a decision to certify an applicant as a HUB.

§20.284. Statewide Annual HUB Utilization Goals.

(a) In accordance with §20.281 of this title (relating to Policy and Purpose) and Government Code, §2161.181 and §2161.182, each state agency shall make a good faith effort to utilize HUBs in contracts for construction, services (including professional and consulting services) and commodities purchases. Each state agency may achieve the statewide and/or state agency-specific annual HUB goals specified in the state agency's Legislative Appropriations Request by contracting directly with HUBs or indirectly through subcontracting opportunities.

(b) The statewide HUB goals for the procurement categories for the State of Texas are:

(1) 11.2% for heavy construction other than building contracts;

(2) 21.1% for all building construction, including general contractors and operative builders contracts;

(3) 32.9% for all special trade construction contracts;

(4) 23.7% for professional services contracts;

(5) 26.0% for all other services contracts; and

(6) 21.1% for commodities contracts.

(c) State agencies shall establish their own state agency-specific HUB goals for each procurement category outlined in subsection (b) of this section. Agencies can set their state agency-specific HUB goals higher or lower than the goals set out in subsection (b) of this section; however, at a minimum, the statewide HUB goals should be each state agency's starting point for establishing state agency-specific goals. State agency-specific goals should be based on:

(1) a state agency's fiscal year expenditures and totals contract expenditure;

(2) the availability to a state agency of HUBs in each procurement category;

(3) the state agency's historic utilization of HUBs; and

(4) other relevant factors.

(d) Each state agency shall make a good faith effort to assist HUBs in receiving a portion of the total contract value of all contracts that the state agency expects to award in a fiscal year. Factors in determining a state agency's good faith shall include:

(1) the state agency's performance in meeting or exceeding their state agency-specific HUB goals or the statewide HUB goals as they included as part of their legislative appropriations request in accordance with Government Code, §2161.127; and

(2) the state agency's adoption and implementation of procedures taking the following factors into consideration:

(A) prepare and distribute information on procurement procedures in a manner that encourages participation in state contracts by all businesses;

(B) divide proposed requisitions into reasonable lots in keeping with industry standards and competitive bid requirements;

(C) where feasible, assess bond and insurance requirements and design requirements that reasonably permit more than one business to perform the work;

(D) specify reasonable, realistic delivery schedules consistent with a state agency's actual requirements;

(E) ensure that specifications, terms, and conditions reflect a state agency's actual requirements, are clearly stated, and do not impose unreasonable or unnecessary contract requirements;

(F) provide potential bidders with referenced list of certified HUBs for subcontracting;

(G) develop and apply a written methodology to determine whether any state agency-specific HUB goals are appropriate under the Disparity Study, as some HUB groups have not been underutilized within applicable contracting categories and should not be included in the HUB goals for that category, or whether the statewide goals from the Disparity Study are appropriate for the state agency, and taking into account the provisions of Government Code, §2161.002(d);

(H) identify potential subcontracting opportunities in all contracts and require a HUB subcontracting plan for contracts of $100,000 or more over the life of the contract (including any renewals), where such opportunities exist, in accordance with Government Code, §2161.251; and

(I) seek HUB subcontracting in contracts that are less than $100,000 whenever possible.

(e) A state agency may also demonstrate good faith under this section by submitting a supplemental letter with documentation to the comptroller with their HUB report or legislative appropriations request identifying the progress, including, but not limited to the following, as prescribed by the comptroller:

(1) identifying the percentage of contracts (prime and subcontracts) awarded to businesses that are not certified as HUBs, but that are owned by persons that are members of groups identified in §20.282(19)(C) of this title (relating to Definitions);

(2) demonstrating that a different goal from that identified in subsection (b) of this section was appropriate given the state agency's types of purchases;

(3) demonstrating that a different goal was appropriate given the particular qualifications required by a state agency for its contracts;

(4) demonstrating that a different goal was appropriate given that graduated HUBs cannot be counted toward the goal; or

(5) demonstrating assistance to noncertified HUBs in obtaining certification with the comptroller.

§20.285. Subcontracts.

(a) Analyzing potential contracts of $100,000 or more. In accordance with Government Code, Chapter 2161, Subchapter F, each state agency that considers entering into a contract with an expected value of $100,000 or more over the life of the contract (including any renewals) shall, before the state agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract.

(1) State agencies shall use the following steps to determine if subcontracting opportunities are probable under the contract:

(A) examining the scope of work to be performed under the proposed contract and determining if it is likely that some of the work may be performed by a subcontractor;

(B) research the Centralized Master Bidders List, the HUB Directory, the Internet, and other directories, identified by the comptroller, for HUBs that may be available to perform the contract work; and

(C) a state agency may determine that subcontracting is probable for only a subset of the work expected to be performed or the funds to be expended under the contract. If a state agency determines that subcontracting is probable on only a portion of a contract, it shall document its reasons in writing for the procurement file.

(2) In addition, determination of subcontracting opportunities may include, but is not limited to, the following:

(A) contacting other state and local agencies and institutions of higher education to obtain information regarding similar contracting and subcontracting opportunities; and

(B) reviewing the history of similar state agency purchasing transactions.

(b) Receipt of HUB subcontracting plans.

(1) If, through the analysis in subsection (a) of this section, a state agency determines that subcontracting opportunities are probable, then its invitation for bids, request for proposals or other purchase solicitation documents shall state that probability and require a HUB subcontracting plan. A bid, proposal, offer, or other expression of interest to such a solicitation must include a completed HUB subcontracting plan to be considered responsive.

(2) The HUB subcontracting plan shall be submitted with the respondent's response on or before the due date for responses, except for construction contracts involving alternative delivery methods. For construction contracts involving alternative delivery methods, the HUB subcontracting plan may be submitted up to 24 hours following the date/time that responses are due provided that responses are not opened until the HUB subcontracting plan is received.

(3) Responses that do not include a completed HUB subcontracting plan in accordance with this subsection shall be rejected due to material failure to comply with Government Code, §2161.252(b).

(4) If a properly submitted HUB subcontracting plan contains minor deficiencies (e.g., failure to sign or date the plan, failure to submit already-existing evidence that three HUBs were contacted), the state agency may contact the respondent for clarification to the plan if it contains sufficient evidence that the respondent developed and submitted the plan in good faith.

(c) Requirements of a HUB subcontracting plan.

(1) A state agency shall require a respondent to state whether it is a certified HUB. A state agency shall also require a respondent to state overall subcontracting and overall certified HUB subcontracting to be provided in the contract. Respondents shall follow procedures in paragraph (2)(A) - (D) of this subsection when developing the HUB subcontracting plan.

(2) The HUB subcontracting plan shall include the state agency's HUB goals for its HUB business plan, and shall consist of completed forms prescribed by the comptroller and shall include the following:

(A) certification that respondent has made a good faith effort to meet the requirements of this section;

(B) identification of the subcontractors that will be used during the course of the contract;

(C) the expected percentage of work to be subcontracted; and

(D) the approximate dollar value of that percentage of work.

(3) The successful respondent shall provide all additional documentation required by the state agency to demonstrate compliance with good faith effort requirements prior to contract award. If the successful respondent fails to provide supporting documentation (phone logs, fax transmittals, electronic mail, etc.) within the timeframe specified by the state agency to demonstrate compliance with this subsection prior to contract award, that respondent's bid/proposal shall be rejected

for material failure to comply with advertised specifications and state law.

(d) Establishing good faith effort by respondent.

(1) Any person submitting a bid, proposal, offer or other applicable expression of interest in obtaining a contract with the state shall submit a completed HUB subcontracting plan demonstrating evidence of good faith effort in developing that plan. Good faith effort shall be shown through utilization of the methods specified below, and in full conformance with all directions for demonstration and submission specified in the HUB subcontracting plan forms prescribed by the comptroller.

(A) Divide the contract work into reasonable lots or portions to the extent consistent with prudent industry practices.

(B) Provide written justification of the selection process if the selected subcontractor is not a HUB.

(C) Provide documentation of meeting one or more of the following requirements:

(i) notify trade organizations or development centers that serve members of groups identified in §20.282(19)(C) of this title (relating to Definitions) according to methods established by the comptroller to assist in identifying HUBs by disseminating subcontracting opportunities to their membership/participants. The notice shall, in all instances, include the scope of work, information regarding location to review plans and specifications, information about bonding and insurance requirements, and identify a contact person. Respondent must provide notice to organizations or development centers no less than seven (7) working days prior to submission of the response unless circumstances require a different time period, which is determined by the state agency and documented in the contract file. The respondent must document compliance with this subsection on the forms prescribed by the comptroller in the manner directed on such forms;

(ii) submit documentation that 100% of all available subcontracting opportunities will be performed by one or more HUBs; or

(iii) submit documentation that one or more HUB subcontractors will be utilized and that the total value of those subcontracts will meet or exceed the statewide goal for the appropriate contract category found in §20.284(b) of this title (relating to Statewide Annual HUB Utilization Goals), or the state agency-specific goal for the contracting category established by the procuring state agency, whichever is higher. When utilizing this demonstration method, HUB subcontractors with which the respondent has existing contracts that have been in place for more than five years can not be claimed for purposes of demonstrating that the applicable goal has been met or exceeded.

(D) Provide documentation of meeting one or more of the following requirements:

(i) notify at least three (3) HUB businesses of the subcontracting opportunities that the respondent intends to subcontract. The respondent shall provide the notice described in this section to three or more HUBs per each subcontracting opportunity that provide the type of work required for each subcontracting opportunity identified in the contract specifications or any other subcontracting opportunity the respondent cannot complete with its own equipment, supplies, materials, and/or employees. The notification shall be in writing, and the respondent must document the HUBs contacted on the forms prescribed by the comptroller. The notice shall, in all instances, include the scope of the work, information regarding the location to review plans and specifications, information about bonding and insurance requirements, and identify a contact person. The notice shall be provided to potential HUB subcontractors at least seven (7) working days prior to submission of the respondent's response, unless circumstances require a different time period, which is determined by the state agency and documented in the contract file;

(ii) submit documentation that 100% of all available subcontracting opportunities will be performed by one or more HUBs; or

(iii) submit documentation that one or more HUB subcontractors will be utilized and that the total value of those subcontracts will meet or exceed the statewide goal for the appropriate contract category found in §20.284(b) of this title, or the state agency-specific goal for the contracting category established by the procuring state agency, whichever is higher. When utilizing this demonstration method, HUB subcontractors with which the respondent has existing contracts that have been in place for more than five years can not be claimed for purposes of demonstrating that the applicable goal has been met or exceeded.

(2) The respondent shall use the comptroller's Centralized Master Bidders List, the HUB Directory, Internet resources, and/or other directories as identified by the comptroller or the state agency when searching for HUB subcontractors. Respondents may utilize the services of minority, women, and community organizations contractor groups, local, state, and federal business assistance offices, and other organizations that provide assistance in identifying qualified applicants for the HUB program who are able to provide all or select elements of the HUB subcontracting plan.

(3) In making a determination if a good faith effort has been made in the development of the required HUB subcontracting plan, a state agency may require the respondent to submit supporting documentation explaining how the respondent has made a good faith effort according to each criterion listed in subsection (c)(2)(A) - (D) of this section. The documentation shall include at least the following:

(A) how the respondent divided the contract work into reasonable lots or portions consistent with prudent industry practices;

(B) how the respondent's notices contain adequate information about bonding, insurance, the availability of plans, the specifications, scope of work, required qualifications and other requirements of the contract allowing reasonable time for HUBs to participate effectively;

(C) how the respondent negotiated in good faith with qualified HUBs, not rejecting qualified HUBs who were also the best value responsive bidder;

(D) how the respondent provided notice to trade organizations or development centers to assist in identifying HUBs by disseminating subcontracting opportunities to their membership/participants;

(E) for contracts subject to paragraph (1)(D)(ii) of this subsection, which HUBs were contracted to perform the subcontracting services for each subcontracting opportunity; and

(F) for contracts subject to paragraph (1)(D)(iii) of this subsection, which contractor(s) were utilized to perform the subcontracting opportunities, and the relevant dates for the respondent's contractual agreements with the contractor(s).

(4) A respondent's participation in a Mentor-Protégé Program under Government Code, §2161.065, and the submission of a protégé as a subcontractor in the HUB subcontracting plan constitutes a good faith effort for the particular area to be subcontracted with the protégé. When submitted, state agencies may accept a Mentor-Protégé

Agreement that has been entered into by the respondent (mentor) and a certified HUB (protégé). The state agency shall consider the following in determining the respondent's good faith effort:

(A) if the respondent has entered into a fully executed Mentor-Protégé Agreement that has been registered with the comptroller prior to submitting the plan, and

(B) if the respondent's HUB subcontracting plan identifies the areas of subcontracting that will be performed by the protégé.

(5) If the respondent is able to fulfill all of the potential subcontracting opportunities identified with its own equipment, supplies, materials and/or employees, respondent must sign an affidavit and provide a statement explaining how the respondent intends to fulfill each subcontracting opportunity. The respondent must agree to provide the following if requested by the state agency:

(A) evidence of existing staffing to meet contract objectives;

(B) monthly payroll records showing company staff fully engaged in the contract;

(C) on site reviews of company headquarters or work site where services are to be performed; and

(D) documentation proving employment of qualified personnel holding the necessary licenses and certificates required to perform the work.

(e) Reviewing the HUB subcontracting plan. The HUB subcontracting plan shall be reviewed and evaluated prior to contract award and, if accepted, shall become a provision of the state agency's contract. Revisions necessary to clarify and enhance information submitted in the original HUB subcontracting plan may be made in an effort to determine good faith effort. State agencies shall review the documentation submitted by the respondent to determine if a good faith effort has been made in accordance with this section. If the state agency determines that a submitted HUB subcontracting plan was not developed in good faith, the state agency shall treat that determination as a material failure to comply with advertised specifications, and the subject response (bid, proposal, offer, or other applicable expression of interest) shall be rejected. The reasons for rejection shall be recorded in the procurement file.

(f) Maintaining records.

(1) Prime contractors shall maintain business records documenting compliance with the HUB subcontracting plan and shall submit a compliance report to the contracting state agency monthly, in the format required by the comptroller. The compliance report submission shall be required as a condition for payment.

(2) During the term of the contract, the state agency shall monitor the HUB subcontracting plan monthly to determine if the value of the subcontracts to HUBs meets or exceeds the HUB subcontracting provisions specified in the contract. Accordingly, state agencies shall audit and require a prime contractor to report to the state agency the identity and the amount paid to its subcontractors in accordance with §20.287(b) of this title (relating to State Agency Reporting Requirements). If the prime contractor is meeting or exceeding the provisions, the state agency shall maintain documentation of the prime contractor's efforts in the contract file. If the prime contractor fails to meet the HUB subcontracting provisions specified in the contract, the state agency shall notify the prime contractor of any deficiencies. The state agency shall give the prime contractor an opportunity to submit documentation and explain to the state agency why the failure to fulfill the HUB subcontracting plan should not be attributed to a lack of good faith effort by the prime contractor.

(g) Monitoring HUB subcontracting plan during the contract.

(1) If the selected respondent decides to subcontract any part of the contract in a manner that is not consistent with its HUB subcontracting plan, the selected respondent must comply with provisions of this section and submit a revised HUB subcontracting plan before subcontracting any of the work under the contract. If the selected respondent subcontracts any of the work without prior authorization and without complying with this section, the selected respondent is deemed to have breached the contract and is subject to any remedial actions provided by Government Code, Chapter 2161, other applicable state law and this section. Agencies shall report nonperformance relative to its contracts to the comptroller in accordance §20.509 of this title (relating to Performance Reporting).

(2) If at any time during the term of the contract, the selected respondent desires to make changes to the approved HUB subcontracting plan, proposed changes must be received for prior review and approval by the state agency before changes will be effective under the contract. The selected respondent must comply with provisions of this section, relating to developing and submitting a subcontracting plan for substitution of work or of a subcontractor, prior to any alternatives being approved under the HUB subcontracting plan. The state agency shall approve changes by amending the contract or by another form of written state agency approval. The reasons for amendments or other written approval shall be recorded in the procurement file.

(3) If a state agency expands the original scope of work through a change order or contract amendment, including a contract renewal that expands the scope of work, the state agency shall determine if the additional scope of work contains additional probable subcontracting opportunities not identified in the initial solicitation. If the state agency determines probable subcontracting opportunities exist, the state agency will require the selected respondent to submit a HUB subcontracting plan/revised HUB subcontracting plan for the additional probable subcontracting opportunities.

(4) To determine if the prime contractor is complying with the HUB subcontracting plan, the state agency may consider the following:

(A) whether the prime contractor gave timely notice to the subcontractor regarding the time and place of the subcontracted work;

(B) whether the prime contractor facilitated access to the resources needed to complete the work; and

(C) whether the prime contractor complied with the approved HUB subcontracting plan.

(5) If a determination is made that the prime contractor failed to implement the HUB subcontracting plan in good faith, the state agency, in addition to any other remedies, may report nonperformance to the comptroller in accordance with §20.585 of this title (relating to Debarment) and §20.586 of this title (relating to Procedures for Investigations and Debarment). In addition, if the prime contractor failed to implement the HUB subcontracting plan in good faith, the state agency may revoke the contract for breach of contract and make a claim against the prime contractor.

(6) State agencies shall review their procurement procedures to ensure compliance with this section.

§20.286. State Agency Planning Responsibilities.

(a) Agencies are required to prepare a written HUB business plan for the use of HUBs in purchasing, and in public works contracts in accordance with Government Code, §2161.123.

(b) Pursuant to Government Code, §2161.003, state agencies shall adopt the comptroller's rules related to administering Government Code, Chapter 2161, Subchapters B and C.

(c) Agencies must include a detailed report with their appropriations request identifying Good Faith Effort compliance. The report should include the state agency's effort to identify HUBs for contracts and subcontracts, the agency's utilization of HUBs and the state agency's successes and shortfalls to increase HUB participation.

§20.287. State Agency Reporting Requirements.

(a) State agencies will report to the comptroller, not later than March 15 of each year regarding the previous six-month period and on September 15 of each year regarding the preceding fiscal year, the payments made for the purchase of goods and services awarded and actually paid from non-treasury funds by the state agency. The report shall include information requested by the comptroller and shall be in a form prescribed by the comptroller. State agencies' purchases from state term contracts/group purchases which are paid from non-treasury funds must be identified on the report as such so that they may be reflected on the comptroller's report of its own purchases.

(b) State agencies shall maintain, and compile monthly, information relating to the state agency's and each of its operating division's use of HUBs, including information regarding subcontractors and suppliers. This information shall include but is not limited to the information required in this section. On a monthly basis, state agencies shall require their prime contractor to report to the state agency the identity and amount paid to each HUB and non-HUB subcontractor to whom the prime contractor has awarded a subcontract for the purchase of supplies, materials and equipment. Prime contractors shall report to the applicable state agency the progress payments made to subcontractors and suppliers each month in which such payment is made.

(c) State agencies will report to the comptroller, not later than March 15 of each year regarding the previous six-month period and on September 15 of each year regarding the preceding fiscal year, the total dollar amount of HUB and non-HUB contracting and subcontracting participation in all of the agencies' contracts for the purchase of goods, services and public works payments. State agencies must include contracting and subcontracting participation paid from treasury and non-treasury funds.

(d) State agencies that participate in a group purchasing program under Government Code, §2155.134 shall include a separate report to the comptroller, not later than March 15 of each year regarding the previous six-month period and September 15 of each year regarding the preceding fiscal year, of purchases that are made through the group purchasing program and shall report the dollar amount of each purchase that is allocated to the reporting state agency.

(e) The comptroller shall prepare a consolidated report based on a compilation and analysis of the reports submitted by each state agency and other information available to the comptroller. These reports of HUB purchasing and contracts shall form a record of each state agency's purchases in which the state agency selected the contractor. If the contractor was selected by the comptroller as part of its state term contract program, the purchase will be reflected on the comptroller's report of its own purchases. The comptroller report will contain the following information:

(1) the total dollar amount of payments made by each state agency;

(2) the total number of HUBs actually paid by each state agency;

(3) the total number of contracts awarded to HUBs by each state agency;

(4) the number of bids received from HUBs by each state agency; and

(5) the graduation rates of HUBs as defined in §20.294 of this title (relating to Graduation Procedures) for the groups identified in §20.282 (19)(C) of this title (relating to Definitions) and certified by the comptroller.

(f) On May 15 of each year, the comptroller shall submit the consolidated report regarding the previous six-month period and on November 15 of each year regarding the preceding fiscal year to the presiding officer of each house of the legislature, the members of the legislature and the joint select committee.

(g) State agencies will receive HUB credit for the total payments awarded directly to certified prime and subcontract HUBs under the Vendor Identification Number in the comptroller's HUB Directory. When the prime contractor is a HUB, it must perform at least 25% of the total value of the contract with its own or leased employees, as defined by the Internal Revenue Service, in order for the state agency to receive 100% HUB credit for the entire contract. A prime that is a HUB may subcontract up to 75% of the contract with HUBs or non-HUB subcontractors. If a prime HUB contractor's HUB subcontracting plan identifies that it is planning to perform less than 25% of the total value of contract with its employees, the state agency will receive HUB credit for the value of the contract that was actually performed by the prime HUB contractor and its HUB subcontractors. To obtain HUB credit, the state agency must report its HUB subcontracting expenditures to the comptroller in accordance with subsection (c) of this section.

(h) Any prime HUB contractor that seeks to satisfy the good faith effort requirement shall report to the state agency the identity and amount paid to each HUB each month in which such payment is made. The report will include the volume of work performed under the contract, the portion of the work that was performed with its employees, non-HUB contractors and other HUB contractors. The state agency may request payment documentation in accordance with subsection (b) of this section and the HUB subcontracting plan that confirms the performance of the contractor. The state agency shall discuss the performance of the contractor and document the contractor's performance in the contract file. Any deficiencies will be identified by the state agency and must be rectified prior to the next reporting period by the contractor.

§20.288. Certification Process.

(a) A business seeking certification as a HUB must submit an application to the comptroller in a form prescribed by the comptroller, affirming under penalty of perjury that the business qualifies as a HUB.

(b) If requested by the comptroller, the applicant must provide any and all materials and information necessary to demonstrate an economically disadvantaged person's active participation in the control, operation, and management of the HUB.

(c) It shall be the burden of the person claiming Texas residency to prove their status through submission of adequate and appropriate documentation. Such documentation may include, but is not limited to, a current valid Texas driver's license or I.D. card, voter registration card showing Texas address, appraisal statement for Texas real property (including whether a homestead exemption was claimed for that real property), or recent paid utility statements. The comptroller shall certify the applicant as a HUB or provide the applicant with written justification of its denial of certification within 90 days after the date the comptroller receives a satisfactorily completed application from the applicant.

(d) The comptroller reviews and evaluates applications, and may reject an application based on one or more of the following:

(1) the application is not satisfactorily completed;

(2) the applicant does not meet the requirements of the definition of HUB;

(3) the application contains false information;

(4) the applicant does not provide required information in connection with the certification review conducted by the comptroller; or

(5) the applicant's record of performance on any prior contracts with the state.

(e) The comptroller may approve the existing certification program of one or more local governments or nonprofit organizations in this state that certify historically underutilized businesses, minority business enterprises, women's business enterprises, or disadvantaged business enterprises that substantially fall under the same definition, to the extent applicable for HUBs found in Government Code, §2161.001, and maintain them on the comptroller's Historically Underutilized Businesses List, if the local government or nonprofit organization:

(1) meets or exceeds the standards established by the comptroller as set out in this subchapter; and

(2) agrees to the terms and conditions as required by statute relative to the agreement between the local government and/or nonprofits for the purpose of certification of HUBs.

(f) The agreement in subsection (e) of this section must take effect immediately and contain conditions as follows:

(1) allow for automatic certification of businesses certified by the local government or nonprofit organization as prescribed by the comptroller;

(2) provide for the efficient updating of the comptroller database containing information about HUBs and potential HUBs as prescribed by the comptroller;

(3) provide for a method by which the comptroller may efficiently communicate with businesses certified by the local government or nonprofit organization;

(4) provide those businesses with information about the state's Historically Underutilized Business Program; and

(5) require that a local government or nonprofit organization that enters into an agreement under subsection (e) of this section, complete the certification of an applicant with written justification of its certification denial within the period established by the comptroller in its rules for certification.

(g) The comptroller will not accept the certification of a local government or nonprofit organization that charges for the certification of businesses to be listed on the Historically Underutilized Business List maintained by the comptroller.

(h) The comptroller may terminate an agreement made under this section if a local government or nonprofit organization fails to meet the standards established by the comptroller for certifying HUBs. In the event of the termination of an agreement, those HUB's that were certified as a result of the agreement will maintain their HUB status during the fiscal year in which the agreement was in effect. Those HUB's who are removed from the HUB list as a result of the termination of an agreement with a local government or nonprofit organization may apply directly to the comptroller for certification as a HUB.

(i) The comptroller will send all certified HUBs an orientation packet including a certificate, description of certification value/significance, list of state agency purchasers, and information regarding electronic commerce, the Texas Marketplace, and the state procurement process.

(j) The certification is valid for a four-year period beginning on the date TPASS certified the applicant as a HUB.

§20.289. Protests.

An applicant may protest the comptroller's denial of its application by filing a written protest with the comptroller within 30 days after the date the comptroller sent notice of the disposition to the applicant. Comptroller staff will then prepare a recommendation for review by the director of the TPASS division of the comptroller. The decision of the director is final.

§20.290. Recertification.

Upon expiration of the four-year period, HUBs that desires recertification must:

(1) return a completed recertification form as provided by the comptroller; and

(2) comply with the requirements specified in §20.288 of this title (relating to the Certification Process) which apply to the recertification process.

§20.291. Revocation.

(a) The comptroller shall revoke the certification of a HUB if the comptroller determines that a business does not meet the definition of HUB or that the business fails to provide requested information in connection with a certification review conducted by the comptroller. The comptroller shall provide the business with written notice of the proposed revocation. Applicants have 30 days from receipt of the written notice to provide written documentation stating the basis for disputing the grounds for revocation. The applicant shall also submit documentation to address the deficiencies identified in the notice. The comptroller shall evaluate the documentation to confirm the applicant's eligibility. The comptroller shall provide the applicant with written notification of their certification status. If an applicant's certification is revoked, the applicant may appeal to the director of the TPASS division of the comptroller within 14 days of receipt of written notice of the revocation. Upon receipt of the applicant's request for appeal, the director will render a decision on the appeal within 30 days of receipt of the written appeal. The decision of the director is final.

(b) If a HUB is barred from participating in state contracts in accordance with Government Code, §2155.077, the comptroller shall revoke the certification of that business for a period commensurate with the debarment period.

§20.292. Certification and Compliance Reviews.

(a) The comptroller will conduct certification reviews of applicants and random compliance reviews of certified businesses by auditing them to verify the information submitted by a business is accurate, and the business continues to meet all HUB eligibility requirements after certification has been granted. Certification is subject to revocation if it is determined that a business does not qualify as an HUB. Certification and compliance reviews of any business may be conducted upon determining a review is warranted.

(b) Businesses subject to certification and compliance reviews must provide the comptroller with any information requested to verify the certification eligibility of the business.

(c) The applicant's business documentation shall be reviewed to substantiate the required level of participation and control, and must

demonstrate responsibility in the critical areas of the business' operation. Eligible owners must be able to make independent and unilateral business decisions which guide the future and destiny of the business, and must be proportionately responsible for the direction and management of the business. The eligible owner's level of participation in the business will be evaluated as set forth in §20.283 of the title (relating to Evaluation of Active Participation in the Control, Operation, and Management of Entities). Absentee or titular ownership by eligible owners who do not take an active role in controlling and participating in the business is not consistent with the definition of a HUB.

(d) The business must meet all other certification and compliance requirements identified in the comptroller's HUB Policies and Procedures used to determined eligibility.

§20.293. Texas Historically Underutilized Business Certification Directory.

The comptroller shall compile in the most cost-efficient format a directory of businesses certified as HUBs. The comptroller shall update the directory as necessary to maintain its accuracy. The comptroller shall provide a copy to state agencies, local governments and the public on a cost recovery basis upon receipt of a written request. The comptroller shall provide access to the directory either electronically or in hard copy, on CD, magnetic tape, or other portable electronic media, depending on the needs of each state agency. The comptroller and state agencies shall use the directory in conjunction with the comptroller's bidders list to solicit bids from certified HUBs for state purchasing and public works contracts.

§20.294. Graduation Procedures.

(a) A HUB shall be graduated from being used to fulfill HUB procurement utilization goals when it has maintained gross receipts or total employment levels during four consecutive years which exceed the SBA size standards set forth in 13 CFR, §121.201 for the following categories:

(1) heavy construction other than building construction;

(2) building construction, including general contractors and operative builders;

(3) special trade construction;

(4) medical, financial, and accounting services;

(5) architectural, engineering and surveying services;

(6) other services including legal services;

(7) commodities wholesale; and

(8) commodities manufacturers.

(b) Firms that achieve the size standards identified in subsection (a) of this section will be assumed to have reached a competitive status in overcoming the effects of discrimination. The comptroller shall review, as part of the certification or recertification process, the financial revenue or relevant data of firms to determine whether the size standards identified in subsection (a) of this section have been achieved.

(c) Businesses that have graduated from the HUB program in accordance with this section, or that have been decertified in accordance with this division, may not be included in meeting state agency HUB goals.

(d) The comptroller shall review the SBA size standards each fiscal year to determine the need to reassess HUB graduation size standards and make any appropriate changes needed.

(e) A HUB that has graduated pursuant to this section or does not qualify as a HUB under §20.282(11) and (19) of this title (relating to Definitions), shall be eligible to reapply for HUB certification only after demonstrating that they meet the qualifications for HUB, including the graduation size standards.

(f) If a HUB is mentoring two or more protégé businesses when it reaches the graduation size standards set forth in subsection (a) of this section, it may petition the director of the TPASS division of the comptroller for a one-year extension of HUB status. The granting of such extension shall be solely at the discretion of the director.

§20.295. Program Review.

The comptroller shall revise the HUB rules based on updates of disparity studies conducted and prepared on behalf of the State of Texas. The comptroller may determine the need to reassess the HUB rules upon receipt of new disparity study information.

§20.296. HUB Coordinator Responsibilities.

(a) In accordance with Government Code, §2161.062(e), state agencies with biennial budgets that exceed $10 million shall designate a staff member to serve as the Historically Underutilized Business (HUB) Coordinator for the state agency during the fiscal year. The HUB coordinator will advise and assist state agency executive directors and staff in complying with the requirements of this division, Government Code, §321.013, and §2101.011, and Government Code, Chapter 2161.

(b) To demonstrate good faith effort, a state agency shall provide the HUB coordinator with necessary and sufficient resources from its current operations and budget to effectively promote the achievement of all the responsibilities of the HUB coordinator. The HUB coordinator will assist its state agency in the development of the state agency's procurement specifications, HUB subcontracting plans, and evaluation of contracts for compliance. The HUB coordinator should be in a position that reports, communicates, and provides information directly to the state agency's executive director. To assist state agencies and the comptroller with HUB compliance, the duties and responsibilities of HUB coordinators include, but are not limited to, facilitating compliance with the state agency's good faith effort criteria, HUB reporting, contract administration, and marketing and outreach efforts for HUB participation. The comptroller may assist agencies, upon request, to identify other responsibilities of a HUB coordinator for compliance.

§20.297. HUB Forum Programs for State Agencies.

(a) In accordance with Government Code, §2161.066, the comptroller shall design a program of forums in which HUBs are invited by state agencies to deliver technical and business presentations that demonstrate their capability to do business with the state agency:

(1) to senior managers and procurement personnel at state agencies that acquire goods and services of a type supplied by the HUBs; and

(2) to prime contractors or vendors with the state who may be subcontracting for goods and services of a type supplied by the HUBs.

(b) Each state agency with a biennial appropriation exceeding $10 million shall participate in the forums by sending senior managers and procurement personnel to attend relevant presentations. The state agency will inform their prime contractors or vendors about presentations relevant to subcontracting opportunities for HUBs and small businesses. The comptroller and each agency that has a HUB coordinator shall:

(1) design its own forum program and model the program, to the extent appropriate, following the format established by the comptroller;

(2) sponsor presentations by HUBs at the state agency offices unless state agency facilities will not accommodate forum participants as determined and documented by the State Agency HUB Coordinator; and

(3) identify and invite HUBs to make marketing presentations on the types of goods and services they provide.

(c) Agencies may elect to implement forums individually or cooperatively with other agencies. The state agency's forum programs may include, but are not limited to, the following initiatives:

(1) providing marketing information that will direct HUBs to key staff within the agency;

(2) requesting other state agencies to assist in the preparation and planning of the forum when necessary;

(3) informing HUBs about potential contract opportunities and future awards; and

(4) preparing an annual report of each sponsored and/or cosponsored forum.

§20.298. Mentor-Protégé Program.

(a) In accordance with Government Code, §2161.065, the comptroller shall design a Mentor-Protégé Program to foster long-term relationships between prime contractors and Historically Underutilized Businesses (HUBs) and to increase the ability of HUBs to contract with the state or to receive subcontracts under a state contract. The objective of the Mentor-Protégé Program is to provide professional guidance and support to the protégé to facilitate their development and growth. All participation is voluntary and program features should remain flexible so as to maximize participation. Each state agency with a biennial appropriation that exceeds $10 million shall implement a Mentor-Protégé Program.

(b) In efforts to design a Mentor-Protégé Program, each state agency, because of its unique mission and resources, is encouraged to implement a Mentor-Protégé Program that considers;

(1) the needs of protégé businesses requesting to be mentored;

(2) the availability of mentors who possess unique skills, talents, and experience related to the mission of the state agency's program; and

(3) the state agency's staff and resources.

(c) Agencies may elect to implement Mentor-Protégé Programs individually or cooperatively with other agencies, and/or other public entities and private organizations, with skills, resources and experience in Mentor-Protégé Programs. Agencies are encouraged to implement a Mentor-Protégé Program to address the needs of its protégé businesses in the following critical areas of the state's procurements:

(1) construction;

(2) commodities; and/or

(3) services.

(d) State agencies may consider, but are not limited to, the following factors in developing their Mentor-Protégé Program:

(1) develop and implement internal procedures, including an application process, regarding the Mentor-Protégé Program which identifies the eligibility criteria and the selection criteria for mentors and potential HUB protégé businesses;

(2) recruit prime contractor or vendor mentors and protégé to voluntarily participate in the program;

(3) establish a Mentor-Protégé Program objective identifying both the roles and expectations of the state agency, mentor and the protégé;

(4) monitor the progress of the mentor protégé relationship;

(5) identify key state agency resources including senior managers and procurement personnel to assist with the implementation of the program;

(6) encourage partnerships with local governmental and nonprofit entities to implement a community based Mentor-Protégé Program;

(7) the appropriate length of time for mentor-protégé relationships to continue. As a general matter, the statewide HUB program recommends that such relationships be limited to four years;

(8) explore other methods and procedures related to Mentor-Protégé Programs recommended in the Texas Disparity Study-2009; and

(9) assess the effectiveness of their Mentor-Protégé Program by conducting periodic surveys/interviews of both mentors and protégés.

(e) A state agency's Mentor-Protégé Program must include mentor eligibility and selection criteria. In determining the eligibility and selection of a mentor, state agencies may consider the following criteria:

(1) whether the mentor is a registered bidder on the comptroller's Centralized Master Bidders List (CMBL);

(2) whether the mentor has extensive work experience and can provide developmental guidance in areas that meet the needs of the protégé, including but not limited to, business, financial, and personnel management; technical matters such as production, inventory control and quality assurance; marketing; insurance; equipment and facilities; and/or other related resources;

(3) whether the mentor is in "good standing" with the State of Texas and is not in violation of any state statutes, rules or governing policies;

(4) whether the mentor has mentoring experience;

(5) the number of protégés that a mentor can appropriately assist;

(6) whether the mentor has a successful past work history with the state agency;

(7) the amount of time a HUB has participated as a mentor in the program, or in other agencies' programs; and

(8) whether and to what extent the mentor and protégé businesses share management, board members, partners, current or former employees, or other resources that might indicate that they are related or affiliated businesses.

(f) A state agency's Mentor-Protégé Program must include protégé eligibility and selection criteria. In determining the eligibility and selection of HUB protégés, state agencies may use the following criteria:

(1) whether the protégé is eligible and willing to become certified as a HUB;

(2) whether the protégé's business has been operational for at least one year;

(3) whether the protégé is willing to participate with a mentoring firm and will identify the type of guidance that is needed for its development;

(4) whether the protégé is in "good standing" with the State of Texas and is not in violation of any state statutes, rules or governing policies;

(5) whether the protégé is involved in a mentoring relationship with another contractor;

(6) the amount of time a HUB has participated as a protégé in the program, or in other agencies' programs; and

(7) whether and to what extent the mentor and protégé businesses share management, board members, partners, employees, or other resources that might indicate that they are related or affiliated businesses.

(g) The mentor and the protégé should agree on the nature of their involvement under the state agency's mentor/protégé initiative. Each state agency will monitor the process of the relationship. The mentor and protégé relationship should be reduced to writing and that agreement may include, but is not limited to, the following:

(1) identification of the developmental areas in which the protégé needs guidance;

(2) the time period which the developmental guidance will be provided by the mentor;

(3) name, address, phone and fax numbers, and the points of contact that will oversee the agreement of the mentor and protégé;

(4) procedure for a mentor firm to notify the protégé in advance if it intends to voluntarily withdraw from the program or terminate the mentor-protégé relationship;

(5) procedure for a protégé firm to notify the mentor in advance if it intends to terminate the mentor-protégé relationship; and

(6) a mutually agreed upon timeline to report the progress of the mentor-protégé relationship to the state agency.

(h) The protégé must maintain its HUB certification status for the duration of the agreement. If a prime contractor has been awarded a contract with a state agency, which requires a HUB subcontracting plan, and the Mentor-Protégé Agreement is terminated, or the protégé's HUB certification expires, the prime contractor must either:

(1) enter into a new agreement with a certified HUB protégé, or

(2) comply with the requirements of this title relating to developing and submitting a HUB subcontracting plan.

(i) Each state agency must notify its mentors and protégés that participation is voluntary. The notice must include written documentation that participation in the state agency's Mentor-Protégé Program is neither a guarantee for a contract opportunity nor a promise of business; but the program's intent is to foster positive long-term business relationships.

(j) State agencies may demonstrate their good faith under this section by submitting a supplemental letter with documentation to the comptroller with their HUB report or legislative appropriations request identifying the progress and testimonials of mentors and protégés that participate in the state agency's program. In accordance with §20.296 of this title (relating to HUB Coordinator Responsibilities) the state agency's HUB coordinator shall facilitate compliance by its state agency.

(k) Each state agency that sponsors a Mentor-Protégé Program must report that information to the comptroller upon completion of a signed agreement by both parties. Information regarding the Mentor-Protégé Agreement shall be reported to the comptroller in a form prescribed by the comptroller within 21 calendar days after the agreement has been signed. The comptroller will register that agreement on the approved list of mentors and protégés. Approved Mentor-Protégé Agreements are valid for all state agencies in determining good faith effort for the particular area of subcontracting to be performed by the protégé as identified in the HUB subcontracting plan.

(l) The comptroller shall maintain and make available to state agencies all registered Mentor-Protégé Agreements. The sponsoring state agency shall monitor and report the termination of an existing Mentor-Protégé Agreement that has been registered with the comptroller within 21 calendar days.

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

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DIVISION 2. ENVIRONMENT, ENERGY AND WATER EFFICIENCY, AND RENEWABLE ENERGY TECHNOLOGIES

34 TAC §20.306, §20.307

The Comptroller of Public Accounts proposes new §20.306, concerning preferences and §20.307, concerning state agency procurements of recycled, remanufactured, or environmentally sensitive commodities or services.

The comptroller proposes to rename Chapter 20 Statewide Procurement and Support Services and rename Subchapter D Socioeconomic Program. New §20.306 and §20.307 will be part of Subchapter D, under new Division 2, Environment, Energy and Water Efficiency, and Renewable Energy Technologies.

New §20.306 incorporates the provisions of former §20.38(b)(1)(A) and (b)(2) in the reorganization of Chapter 20, revises it to refer to the comptroller instead of the commission, and adds the requirements under Health & Safety Code, §361.991 for a preference for certain television manufacturers based on recovery and recycling efforts.

New §20.307 incorporates the provisions of former §20.135 in the reorganization of Chapter 20, revises it to clarify state agency instead of agency, and revises it to refer to the comptroller instead of the commission.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rules will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the comptroller's procedures for statewide procurement and support services. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the proposed rules may be submitted to Amy Comeaux, Statewide Procurement Division, at amy.comeaux@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposals in the *Texas Register.*

The new sections are proposed under Government Code, §2161.0012 and §2161.002(c).

The following statutes are affected by the new sections: Government Code, Chapter 2161, §§2161.0011, 2161.002, 2161.0015, 2161.004, 2161.061, 2161.062, 2161.065, 2161.181, and 2161.252.

§20.306. Preferences.

(a) Texas and United States products and Texas services. The terms used in this section are as defined by Government Code. §2155.444(c).

(1) If goods, including agricultural products, produced or grown in this state or offered by Texas bidders are not equal in cost and quality to other products, then goods, including agricultural products, produced or grown in other states of the United States shall be given preference over foreign products if the cost to the state and quality are equal. However, a preference shall be given to those goods produced or grown in this state or offered by Texas bidders as follows:

(A) goods produced or offered by a Texas bidder that is owned by a service-disabled veteran who is a Texas resident shall be given a first preference and goods produced in this state or offered by other Texas bidders shall be given second preference, if the cost to the state and quality are equal; and

(B) agricultural products grown in this state shall be given first preference and agricultural products offered by Texas bidders shall be given second preference, if the cost to the state and quality are equal.

(2) A preference shall be given for purchases of Texas vegetation native to the region for landscaping purposes, including plants, if the cost to the state is not greater and the quality is not inferior.

(3) A first preference shall be given to services offered by a Texas bidder that is owned by a service-disabled veteran who is a Texas resident and a second preference shall be given to services offered by other Texas bidders if:

(A) the services meet state requirements regarding the service to be performed and expected quality; and

(B) the cost of the service does not exceed the cost of other similar services of similar expected quality that are offered by a bidder that is not entitled to a preference under this subsection.

(4) When an agency conducts an advertising campaign that involves the creation or production of a commercial, in accordance with any additional guidance or rules from the Music, Film, Television, and Multimedia Office within the office of the governor, a preference shall be given to a commercial production company and advertising agency located in this state if:

(A) the services meet state requirements regarding the service to be performed and regarding expected quality; and

(B) the cost of the service does not exceed the cost of other similar services of similar expected quality that are offered by a bidder that is not entitled to a preference.

(b) Products of persons with mental or physical disabilities. A preference shall be given to manufactured products of workshops, organizations, or corporations whose primary purpose is training and employing persons with mental or physical disabilities, if the products meet state specifications as to quantity, quality, and price. Competitive bids are not required for purchases of blind-made goods or services offered as a result of efforts by the Texas Council on Purchasing from People with Disabilities, if the goods or services meet state specifications as to quantity, quality, price, delivery, life cycle costs, and costs no more than the fair market price of similar items.

(c) Recycled, remanufactured or environmentally sensitive products. A preference shall be given to recycled, remanufactured or environmentally sensitive products, including recycled steel products, if the products meet state specifications as to quantity and quality and the average price of the product is not more than 10 percent greater than the price of comparable non-recycled products. The preference for recycled steel products applies also to products purchased in connection with projects described in Government Code, §2166.003.

(d) Covered television equipment. In accordance with Health & Safety Code, §361.991, and 30 TAC Chapter 328, Subchapter J, and in addition to any other preferences under other Texas laws, a preference shall be given to a television manufacturer that:

(1) through its recovery plan collects more than its market share allocation; or

(2) provides collection sites or recycling events in any county located in a council of governments region in which there are fewer than six permanent collection sites open at least twice each month.

(e) Energy efficient products. A preference shall be given to energy efficient products if they meet state requirements as to quantity and quality, and are equal to or less than the cost of other products offered. This preference shall be applied by evaluating the energy use of the products offered and considering the costs of such energy use over the expected life of the equipment. The methodology for evaluating energy use and costs shall be included in the bid invitation.

(f) Rubberized asphalt paving material. A preference shall be given to rubberized asphalt paving material made from scrap tires by a facility in this state if the cost, as determined by life-cycle cost benefit analysis, does not exceed the bid cost of alternative paving materials by more than 15%.

(g) Recycled motor oil and lubricants. In the purchase of motor oil and other automotive lubricants for state-owned vehicles, a preference shall be given to motor oils and lubricants that contain at least 25% recycled oil if the quality is comparable and the cost is equal to or less than new oil and lubricants.

(h) Products and services from economically depressed or blighted areas as defined in Government Code, §2306.004 or that meet the definition of a historically underutilized business zone as defined by 15 U.S.C. §632(p). Preference shall be given to goods and services produced in economically depressed or blighted areas if they meet state requirements as to quantity and quality, and are equal to or less than the cost of other similar goods or services offered that are not produced in an economically depressed or blighted area.

(i) Products of facilities on formerly contaminated property. A preference shall be given to goods produced at a facility located on property for which the owner has received a certificate of completion under Health and Safety Code, §361.609, if the goods meet state specifications regarding quantity, quality, delivery, life cycle costs, and price.

(j) Vendors that meet or exceed air quality standards.

(1) For contracts to be performed, in whole or in part, in a designated nonattainment area or an affected county, as those terms are defined by Health and Safety Code, §386.001, the comptroller and state agencies procuring goods and services may:

(A) give preference to goods or services of a vendor that demonstrates that the vendor meets or exceeds any state or federal environmental standards, including voluntary standards, relating to air quality; or

(B) require that a vendor demonstrate that the vendor meets or exceeds any state or federal environmental standards, including voluntary standards, relating to air quality.

(2) The preference may be given only if the cost to the state for the goods and services would not exceed 105% of the cost of the goods or services provided by a vendor who does not meet the standards.

(3) When this preference is made available, the methodology for claiming, evaluating and granting the preference shall be included in the comptroller's and other state agencies' solicitations. The application of the preference should encourage vendor innovation to achieve the clean air objectives as described in the solicitation.

(k) Paper containing recycled fibers. In accordance with Government Code, §2155.446, a preference shall be given to paper containing the highest proportion of recycled fibers for all purposes for which paper with recycled fibers may be used and to the extent that the paper is available at a reasonable price through normal commercial sources to supply the state's needs. The preference does not apply if the average price of paper with recycled fibers exceeds by more than 10 percent the price of comparable non-recycled paper.

(l) Recycled computer equipment of other manufacturers. In accordance with Health and Safety Code, §361.965(d), a preference shall be given to a manufacturer that has a program to recycle the computer equipment of other manufacturers, including collection events, recycling grants, and manufacturer initiatives to accept computer equipment labeled with another manufacturer's brand.

(m) Foods of higher nutritional value. In accordance with Government Code, §2155.442 and the Department of Agriculture's nutrition standards, a preference may be given for contractors who provide foods of higher nutritional value without trans fatty acids for consumption in a public cafeteria.

(n) Travel agents residing in Texas. In accordance with Government Code, §2171.052, the comptroller may make contracts with travel agents that meet certain reasonable requirements prescribed by the central travel office, with preference given to resident entities of this state.

§20.307. State Agency Procurements of Recycled, Remanufactured or Environmentally Sensitive Commodities or Services.

(a) The comptroller may designate as "First Choice" certain recycled, remanufactured or environmentally sensitive commodities or services.

(b) First Choice items are designated recycled, remanufactured, and environmentally sensitive commodities or services that state agencies shall give a preference for when purchasing. These items include, but are not limited to:

(1) re-refined oils and lubricants;

(2) recycled content toilet paper;

(3) recycled content toilet seat covers and paper towels;

(4) recycled content printing, computer and copier paper, and business envelopes;

(5) recycled content plastic trash bags;

(6) recycled content plastic covered binders;

(7) recycled content recycling containers; and

(8) Energy Star labeled photocopiers.

(c) Commodities or services that are designated as First Choice items will be reflected in the State Procurement Manual. The State Procurement Manual will be revised as new commodities or services are designated as First Choice items.

(d) A state agency that intends to purchase a commodity or service that accomplishes the same purpose as a commodity or service identified in Government Code, §2155.448(a) that does not meet the definition of a recycled product or that is not remanufactured or environmentally sensitive shall include with the procurement file a written justification signed by the executive head of the state agency stating the reasons for the determination that the commodity or service identified by the TBPC will not meet the requirements of the state agency.

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

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SUBCHAPTER E. SPECIAL CATEGORIES OF CONTRACTING

DIVISION 1. STATE SUPPORT SERVICES - MAIL AND PRINTING

34 TAC §20.381, §20.382

The Comptroller of Public Accounts proposes new §20.381, concerning mail and messenger services and §20.382, concerning printing.

The comptroller proposes to rename Chapter 20 Statewide Procurement and Support Services and rename Subchapter E Special Categories of Contracting. New §20.381 and §20.382 will be part of Subchapter E, under new Division 1, State Support Services - Mail and Printing.

New §20.381 incorporates the provisions of former §20.231 in the reorganization of Chapter 20, revises it to refer to the comp-

troller instead of the commission, and revises it to clarify state agency instead of agency.

New §20.382 incorporates the provisions of former §20.261 in the reorganization of Chapter 20, revises it to refer to the comptroller instead of the commission, and clarifies the enabling statutory reference.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rules will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the comptroller's procedures for statewide procurement and support services. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the proposed rules may be submitted to Amy Comeaux, Statewide Procurement Division, at amy.comeaux@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposals in the *Texas Register.*

The new sections are proposed under Government Code, §§403.023, 783.004, 2113.103, 2155.0012, 2156.0012, 2171.002, 2172.0012, 2172.006, and 2176.110.

The following statutes are affected by the new sections: Government Code, Title 7, Chapter 783, Government Code Title 10, Subtitle D, Chapter 2176, and Government Code §§2113.103, 2171.002, 2171.054, 2171.056, 2171.104, 2171.1045, and 2172.006.

§20.381. Mail and Messenger Services.

(a) The comptroller provides and operates an interagency mail and messenger service to deliver unstamped or non-metered written communications and packages between the legislature, state agencies and legislative agencies located in Travis County.

(b) No personal mail will be carried by the mail and messenger service. No package that exceeds 70 pounds will be delivered by the mail and messenger service.

(c) State warrants may be delivered by the mail and messenger service upon agreement by the state comptroller and the agency concerned.

(d) Mail may be delivered to and from the United States Post Office upon the agreement of the state agency and the comptroller.

(e) The mail and messenger service may process and meter outgoing mail for state agencies upon agreement of the state agency and the comptroller. Each state agency must furnish funds to cover amounts of postage to be metered.

(1) No mail shall be metered for a state agency in excess of funds provided by the agency, unless approved by the comptroller so as to avoid undue delays in processing mail. Any deficit in an agency's postage account shall be promptly reimbursed to the comptroller.

(2) The mail and messenger service will provide each state agency utilizing the metered mail service with a monthly report showing the amounts of postage used and volume of mail metered.

(3) State agencies who use the comptroller's outgoing mail service for the purpose of postage meter rental requirements and cost effective mailing requirements will be considered to be in compliance with Government Code, Chapter 2176 and Government Code, §2113.103.

(f) A state agency located in Travis County is required to consult with the comptroller before renting, purchasing, upgrading, or selling mail processing equipment; contracting with a private entity for mail processing services; or taking any action that will significantly affect the agency's first class mail practices.

(1) For mail equipment or private entity service contracts under $10,000, a state agency shall submit a written justification to the comptroller stating why the equipment or service is needed and what benefits are expected to be received.

(2) For mail equipment or private service contracts over $10,000, a state agency shall submit a detailed life-cycle cost benefit analysis to the comptroller that includes all expected costs and benefits over the life of the equipment or service. The analysis shall be in a format prescribed by the comptroller.

(3) For any action that will significantly affect its first class mail practices, a state agency shall provide a written statement of the need for the action and anticipated benefits. Significant actions affecting the first class mail practices of an agency include, but are not limited to, the following:

(A) creation or elimination of internal mail processing functions, organization, or staff; and

(B) addition or elimination of any specific mail processing activities such as metering, presorting, folding/inserting, or labeling.

(4) The comptroller shall provide a written response to the state agency indicating whether or not it agrees with the intended action and any suggested alternatives.

(g) The comptroller establishes statewide term contracts for postage meter machine rentals when in the best interest of the state. Postage for statewide term contracts is purchased separately by state agencies and cooperative purchasing members. State agencies may pay for postage in accordance with the requirements of United States Postal Service Domestic Mail Manual.

§20.382. Printing.

(a) Pursuant to Government Code, §2172.003, the comptroller may provide assistance to any state agency regarding their printing activities. Assistance can be provided by telephone, fax, letter, e-mail or in person.

(b) The comptroller assesses and evaluates printing activities to ensure the best interests of the State of Texas are met. The comptroller may make recommendations to state agencies that will increase the productivity and cost-effectiveness of their printing operations. The assessment may include but is not limited to an appraisal of equipment, customer base, sales, printing volume, costs, and personnel.

(c) The comptroller adopted the Council on Competitive Government's (CCG) Cost Methodology as a baseline for evaluating and comparing cost of state agency printing operations. All state agency print shops in Travis County (except higher education) operate under a Franchise Agreement ("Agreement") with the comptroller, which allows state agencies currently operating a print shop to maintain direct control with general oversight provided by the comptroller through Franchise Agreements. Failure to sign the Agreement will eliminate the authority for a state agency to operate a print shop. The Agreement requires each print shop to utilize the CCG Cost Methodology in de-

termining the cost of printing. Each print shop shall provide quarterly data to the comptroller, which will summarize this information in quarterly and annual reports.

(d) The comptroller reviews state agency requisitions for new print shop equipment, including copiers/duplicators and other printing devices used in quick copy operations. To complete the review, the state agency must provide written documentation to the comptroller. This documentation may include but is not limited to:

(1) a summary narrative justifying the proposed purchase, rent or lease of equipment;

(2) a description of the method of finance;

(3) a detailing of the model(s) of printing equipment the agency currently has that it plans to replace (if applicable);

(4) a detailing of the model(s) of printing equipment the agency plans to acquire;

(5) a detailing of current annual costs for equipment to be replaced (if applicable);

(6) a detailing of the estimated annual cost for the proposed equipment;

(7) the cost benefit of proposed equipment;

(8) the estimated volume of work which may be processed through the proposed equipment;

(9) a summary of the equipment(s) enhanced features;

(10) the number of hours per day the proposed equipment will run;

(11) the number of shifts the proposed equipment will be operated on a daily basis; and

(12) miscellaneous information that may be pertinent as a consequence of other information supplied by the agency.

(e) The comptroller shall assist state agencies with expediting the production of printing and graphic arts by serving as a source of information, facilitating disputes, hosting meetings, or performing other services.

(f) A roster of franchised print shops is maintained by the comptroller. This roster includes print shop equipment, facilities, special capabilities, and staffing. The roster will be provided to requesting entities.

(g) The comptroller will work with state agencies to ensure that printing services and supplies are purchased in the most economical manner possible. A vendor listing by commodity and services is maintained to maximize information regarding private sector suppliers. A summary vendor listing will be provided to requesting entities.

(h) The comptroller will work with state agencies to coordinate the consolidation of print shops when the agencies involved determine a consolidation is appropriate.

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

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DIVISION 2. STATE SUPPORT SERVICES - TRAVEL AND VEHICLES

34 TAC §§20.406 - 20.413

The Comptroller of Public Accounts proposes new §20.406, concerning purpose and applicability; §20.407, concerning definitions; §20.408, concerning exceptions to the use of contract travel services; §20.409, concerning state agency contracts and requests for exceptions; §20.410, concerning state agency travel coordinators; §20.411, concerning state agency reimbursement and reporting; §20.412, concerning procuring travel agency and other travel related services; and §20.413, concerning state travel credit cards.

The comptroller proposes to rename Chapter 20 Statewide Procurement and Support Services and rename Subchapter E Special Categories of Contracting. New §§20.406- 20.413 will be part of Subchapter E, under new Division 2, State Support Services - Travel and Vehicles.

New §20.406 incorporates the provisions of former §20.301 in the reorganization of Chapter 20 and revises it to refer to the comptroller instead of the commission.

New §20.407 incorporates the provisions of former §20.302 in the reorganization of Chapter 20 and revises it to refer to the comptroller instead of the commission.

New §20.408 incorporates the provisions of former §20.303 in the reorganization of Chapter 20.

New §20.409 incorporates the provisions of former §20.304 in the reorganization of Chapter 20 and revises it to refer to the comptroller instead of the commission.

New §20.410 incorporates the provisions of former §20.305 in the reorganization of Chapter 20 and revises it to refer to the comptroller instead of the commission.

New §20.411 incorporates the provisions of former §20.306 in the reorganization of Chapter 20 and revises it to refer to the comptroller instead of the commission.

New §20.412 incorporates the provisions of former §20.307 in the reorganization of Chapter 20 and revises it to refer to the comptroller instead of the commission.

New §20.413 incorporates the provisions of former §20.308 in the reorganization of Chapter 20 and revises it to clarify that travel services, whether contracted or not, shall be charged to state travel credit cards when feasible.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rules will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the comptroller's procedures for statewide procurement and support ser-

vices. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the proposed rules may be submitted to Amy Comeaux, Statewide Procurement Division, at amy.comeaux@cpa.texas.gov or at P.O. Box 13528 Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposals in the *Texas Register.*

The new sections are proposed under Government Code, §§403.023, 783.004, 2113.103, 2155.0012, 2156.0012, 2171.002, 2172.0012, 2172.006, and 2176.110.

The following statutes are affected by the new sections: Government Code, Title 7, Chapter 783, Government Code Title 10, Subtitle D, Chapter 2176, and Government Code §§2113.103, 2171.002, 2171.054, 2171.056, 2171.104, 2171.1045, and 2172.006.

§20.406. Purpose and Applicability.

(a) Purpose. This subchapter governs the use of contract travel services and state travel credit cards by state officials and employees and other eligible persons. Contract travel services may include state credit cards, travel agencies, airlines, vehicles, internet based reservation and ticketing, lodging and other modes and necessities of state business related travel. The purpose of this subchapter is to encourage travelers to obtain the lowest overall cost of travel services. These rules do not alter, amend or affect the requirements in Government Code, Chapter 660 relating to travel or the comptroller's statutes and rules.

(b) Applicability. This subsection defines the persons and entities eligible to use contract travel services.

(1) State agencies. State agency officials and employees, in the executive branch, shall use the contract travel services as required by this subchapter whenever those services provide the most efficient travel resulting in the total lowest cost. State agencies may and are encouraged to purchase travel services at rates lower than the contract travel services rates.

(2) Other governmental entities. Officers and employees of the following entities may, but are not required to, participate in the travel services pursuant to this subchapter. These entities may use contract travel services upon approval by the comptroller of their application for the use of contract travel services:

(A) an institution of higher education as defined in Education Code, §61.003 when the entity uses travel agency services or when the services are purchased from funds other than general revenue or education or general funds as defined by Education Code, §51.009;

(B) Employees Retirement System when the travel is paid from other than general revenue funds;

(C) counties;

(D) municipalities;

(E) public junior colleges;

(F) school districts;

(G) emergency communication districts; and

(H) the supreme court, the court of criminal appeals, the courts of appeals, and other entities in the judicial branch.

(c) Official government business. Contract travel services shall be used only for official governmental business, unless the travel services contractor offers the same services for personal use. No contractor is required to allow the use of contract travel services for other than official governmental business.

§20.407. Definitions.

The following words and terms used in this division are defined as follows unless the context clearly indicates otherwise.

(1) Contractor--An individual or entity under contract with comptroller for the provision of travel services.

(2) Contract travel services--The travel services provided pursuant to comptroller contracts that guarantee prices and levels of services for all eligible entities and individuals.

(3) Force majeure event--Any acts of god, war, riot, strike, or other event beyond the control of a contractor and that could not reasonably have been anticipated or avoided and which, by the exercise of all reasonable due diligence, such contractor is unable to overcome.

(4) Official government business--Business required in the scope and course of the traveler's employment that is properly authorized by the employing governmental entity.

(5) State agency--Any department, commission, board, office, council, or other agency in the executive branch of state government created by the constitution or by statute that is required to use contract travel services pursuant to Government Code, §2171.055.

(6) State employee--Any person employed by a state agency, or an elected or appointed official.

(7) State travel credit card--A credit card issued to an individual or a governmental entity by a contract travel credit card contractor.

(8) State travel directory--A comptroller publication that lists current available contract travel services.

(9) Traveler--Any person eligible to use contract travel services, including those eligible pursuant to the comptroller's travel allowance guide.

§20.408. Exceptions to the Use of Contract Travel Services.

(a) This section provides exceptions to use of contract travel services. These exceptions apply to the use of any contract travel services. When travel services are obtained at a lower total cost than the cost of contract travel services, no reporting of exceptions is required. Exceptions must be documented only when the total cost is greater than contract travel services rates. Nothing in this section affects or alters the authority of the comptroller regarding travel reimbursement or audit agreements.

(b) Lower cost to the state. State agencies may use any travel services obtained at a price lower than the contract travel services price. State agencies are encouraged to obtain lower priced travel services through the use of fourteen day or other advanced reservations programs, promotional price reductions, or any method that provides a lower overall cost of travel.

(c) Unavailability of contract travel services. The contract travel services are not available during the time or at the location necessary for the business purpose; or the contract travel service does not provide for the service required; or because the contractor is unable to provide the contract services due to a force majeure event.

(d) Special needs. The traveler's health, safety, physical condition, or disability requires accommodations, including medical emergency or other necessary services, not available from contract travel service contractors.

(e) Custodians of persons. The traveler has custody of a person pursuant to statute or court order and the traveler is required to provide a degree of security and safety that is not available from contract travel service contractors.

(f) In travel status. The traveler is in the course of travel and changes in scheduling render the use of contract travel services impractical or the appropriate travel services are not available. The traveler shall make reasonable efforts to secure rates equal to or lower than the contract travel service rates.

(g) Group program. The traveler is using a group program wherein reservations were made through a required source to obtain a particular rate or service.

(h) Emergency response. The traveler is responding to a public health or safety emergency situation.

(i) Legally required attendance. The traveler is required by a court, administrative tribunal, or other entity to appear at a particular time and place without sufficient notice to obtain contract travel services.

§20.409. State Agency Contracts and Requests for Exceptions.

(a) Other contracts. A state agency, required to participate in contract travel services, shall not enter into a contract for travel services without prior approval of the comptroller. The comptroller shall consider whether the proposed contract offers the best value for the State and the impact of the proposed contract on existing travel service contracts. A state agency may request the comptroller to establish contract services with a particular contractor.

(b) Requests for additional exceptions. A state agency shall make a written request to the comptroller for additional exceptions, not provided in §20.408 of this title (relating to Exceptions to the Use of Contract Travel Services) when the agency offers a reasonable justification for the need for the exception. Additional exceptions may not be granted for longer than the term of existing contracts.

§20.410. State Agency Travel Coordinators.

(a) State agencies shall designate an employee as the travel coordinator, who shall serve as the single point of contact between the comptroller travel management program and the agency for disseminating and collecting travel data and information. State agencies shall provide the comptroller with the travel coordinator's name, telephone number, e-mail address, mobile telephone number, and other requested and relevant contact information.

(b) State agencies, in cooperation with the comptroller, shall provide training to travel coordinators to ensure that:

(1) agency employees receive current travel information;

(2) contract travel services are used in accordance with this subchapter;

(3) travel data reports are submitted in compliance with this subchapter;

(4) agency travel activity is monitored for compliance with this subchapter and other applicable laws and rules; and

(5) complaints, concerns or other information relevant to achieving the efficient and economical travel services for the state are reported to the comptroller.

(c) State agencies shall cooperate with the comptroller by allowing travel coordinators to participate in travel advisory, proposal evaluation, education, and any other groups needed to assist the comptroller in contracting for the most economical, efficient, and useful travel services.

§20.411. State Agency Reimbursement and Reporting.

(a) State agency officials and employees shall adhere to applicable laws and the regulations and guidelines of the comptroller governing travel vouchers.

(b) Reimbursement for Travel Expenses. State agencies shall not approve and the comptroller shall not pay travel vouchers for services at rates higher than contract rates, unless an exception in §20.408 of this title (relating to Exceptions to the Use of Contract Travel Services) or §20.409 of this title (relating to State Agency Contracts and Requests for Exceptions) applies. Travel vouchers submitted for reimbursement shall indicate the claimed exception in a manner prescribed by the comptroller.

(c) Audits. The comptroller may conduct pre-payment and post-payment audits of travel reimbursement requests; the audits may include a review of the propriety of claimed exceptions from the use of contract travel services.

(d) False claims for reimbursement. All claims for travel reimbursement are subject to Government Code, §403.071 relating to claims and available money. Any person who knowingly makes a false claim against the state is subject to the penalties in Government Code, §403.071(f) and other applicable laws.

(e) Monthly reporting. The reports required by this subsection are for those travel services not charged to a state travel credit card.

(1) State agencies shall report the expenditures, as the total dollars spent, and activities, as the total number of trips and days of rental or lodging, relating to travel services as follows:

(A) air, bus, and rail travel: total dollar spend and total number of trips;

(B) rental car: total dollar spend, total number of trips, and total rental days;

(C) hotel/lodging: total dollar spend, total lodging trips; total number of nights; and

(D) travel reservation and booking fees: total dollar spend and total number of reservations.

(2) Travel reports shall be submitted to the comptroller's Procurement Policy and Strategy Program on or before the 28th day following the reporting month.

(3) Travel reports shall be submitted on a compact or floppy disc in Excel format via United States Postal Service or e-mail. The comptroller may also adopt other reporting methods, including web based reporting.

§20.412. Procuring Travel Agency and Other Travel Related Services.

(a) This section describes the authorized methods of procurement for travel services and the specific methods for travel agency contracts.

(b) Travel agency contract structure. The comptroller's travel agency contracts shall contain a clear statement of the services provided and the cost associated with each service. The contracts shall also contain descriptions of other ancillary services and any other provisions necessary for the convenience of the state.

(c) Solicitation and evaluation procedures for travel agency contracts.

(1) The comptroller is not required to competitively bid travel agency contracts.

(2) The comptroller may negotiate contracts for travel agency services.

(3) The comptroller shall solicit private sector entities to participate in negotiated contracts through effective and efficient means that ensure the best value for the state.

(4) The comptroller shall consider the following criteria when evaluating proposed travel agency services:

(A) quantity of services;

(B) quality of services;

(C) price; and

(D) any other terms or conditions required to provide the overall best value for the state.

(d) Other contracts. The comptroller may use authorized competitive or negotiated procedures for procuring travel services. The comptroller shall solicit, evaluate and award contracts for travel services in a manner that achieves the best overall value for the state.

§20.413. State Travel Credit Cards.

(a) State credit card. State agencies, officials, and employees shall use state travel credit cards to purchase contract and non-contract travel services. Travel services for airfare shall be charged to state travel credit cards. Travel services for lodging, rental vehicles and other necessary travel expenses shall be charged to state travel credit cards, when feasible; purchases by other methods shall be reported monthly pursuant to §20.411(e) of this title (relating to State Agency Reimbursement and Reporting).

(b) Eligibility. Any entity eligible to use contract travel services is also eligible to obtain state travel credit cards. State credit cards may be used only for official state business and may be issued to individuals and state agencies.

(c) State travel credit cards issued to individuals. State agency employees should be issued a state travel credit card when the employee is expected to take at least three trips or spend at least $500 per fiscal year for official state travel business. State agencies may, at their discretion, approve the issuance of the cards to any employee.

(d) State agencies shall ensure that:

(1) state travel credit cards are cancelled upon the employee's termination of employment;

(2) state travel credit cards are cancelled when the employee fails to timely pay the charges, uses the card for personal transactions, or any other misuse of the credit card; and

(3) individuals who are issued state travel credit cards understand that payment of charges on state travel credit cards is the sole responsibility of the individual and that the state shall not be responsible for the charges or for nonpayment by the employee.

(e) Individual billing. State travel credit cards issued to individuals shall be billed directly to the individual who may obtain reimbursement through properly submitted state travel vouchers that comply with this subchapter and the rules and guidelines of the comptroller. Other individuals eligible to use state travel credit cards shall comply with the reimbursement rules and procedures of their governing entity.

(f) Centralized billing. A state travel credit card issued to an eligible entity shall be billed to that entity which may receive reimbursement pursuant to applicable statutes and rules.

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

Filed with the Office of the Secretary of State on October 26, 2016.

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Don Neal
Chief Deputy General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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DIVISION 3. STATE SUPPORT SERVICES - VEHICLE FLEET MANAGEMENT

34 TAC §§20.431 - 20.439

The Comptroller of Public Accounts proposes new §20.431, concerning definitions; §20.432, concerning office of vehicle fleet management; §20.433, concerning state vehicle fleet management plan; §20.434, concerning assignment and use of pooled vehicles; §20.435, concerning vehicle fleet management system; §20.436, concerning assistance to state agencies and school districts; §20.437, concerning waiver of vehicles to meet required fleet percentages; §20.438, concerning effect of waiver; and §20.439, concerning alternative fuel usage.

The comptroller proposes to rename Chapter 20 Statewide Procurement and Support Services and rename Subchapter E Special Categories of Contracting. New §§20.431 - 20.439 will be part of Subchapter E, under new Division 3, State Support Services - Vehicle Fleet Management.

New §20.431 incorporates the provisions of former §20.340 in the reorganization of Chapter 20.

New §20.432 incorporates the provisions of former §20.341 in the reorganization of Chapter 20 and revises it to refer to the comptroller instead of the commission.

New §20.433 incorporates the provisions of former §20.342 in the reorganization of Chapter 20 and revises it to refer to the comptroller instead of the commission.

New §20.434 incorporates the provisions of former §20.343 in the reorganization of Chapter 20 and revises it to refer to the comptroller instead of the commission.

New §20.435 incorporates the provisions of former §20.345 in the reorganization of Chapter 20, revises it to refer to the comptroller instead of the commission, and revises it to clarify state agency instead of agency.

New §20.436 incorporates the provisions of former §20.363 in the reorganization of Chapter 20, revises it to refer to the comptroller instead of the commission, and revises it to refer to the Texas Commission on Environmental Quality instead of the Texas Natural Resource Conservation Commission.

New §20.437 incorporates the provisions of former §20.365 in the reorganization of Chapter 20, revises it to refer to the comptroller instead of the commission, and revises it to clarify state agency instead of agency.

New §20.438 incorporates the provisions of former §20.367 in the reorganization of Chapter 20 and revises it to refer to the comptroller instead of the commission.

New §20.439 incorporates the provisions of former §20.369 in the reorganization of Chapter 20 and revises it to refer to the comptroller instead of the commission.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rules will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the comptroller's procedures for statewide procurement and support services. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the proposed rules may be submitted to Amy Comeaux, Statewide Procurement Division, at amy.comeaux@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposals in the *Texas Register.*

The new sections are proposed under Government Code, §§403.023, 783.004, 2113.103, 2155.0012, 2156.0012, 2171.002, 2172.0012, 2172.006, and 2176.110.

The following statutes are affected by the new sections: Government Code, Title 7, Chapter 783, Government Code Title 10, Subtitle D, Chapter 2176, and Government Code §§2113.103, 2171.002, 2171.054, 2171.056, 2171.104, 2171.1045, and 2172.006.

§20.431. Definitions.

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

(1) Alternative fuel--Compressed natural gas, liquefied natural gas, liquefied petroleum gas, electricity, methanol (or M85), or ethanol (or E85).

(2) Alternative fuel vehicle--A motor vehicle capable of using alternative fuel in the original equipment manufactured engine, or in a converted traditional gasoline or diesel engine.

(3) Assigned vehicle--A state vehicle normally driven by the same employee or small specific group of employees.

(4) Capitalized value--The original cost of a vehicle, plus later adjustments for major additions or improvements.

(5) Direct labor--The cost of labor associated with repairing or servicing vehicles, whether performed by a contractor or state employee.

(6) Disposal date--The date on which a state vehicle is no longer included in a state agency's property inventory.

(7) Downtime--The total number of working hours a state vehicle, otherwise eligible for assignment, is out of service for repair or maintenance.

(8) Field employee--A state employee whose regular duties require work in locations other than agency headquarters or regional offices and who regularly require a vehicle for ongoing daily duties.

(9) Fleet officer--The individual designated by each state agency who is responsible for the timely and accurate submission of all required information utilized by the vehicle fleet management system.

(10) Gross vehicle weight (GVW)--The greatest weight of vehicle and load which the manufacturer recommends that a vehicle accommodate. The GVW includes the total weight of chassis, cab, body, special equipment, oil, water, gasoline, driver, and the maximum payload.

(11) Indirect labor--The labor cost of vehicle fleet related employees whose time cannot be identified with repairing or servicing individual vehicles.

(12) OVFM--The comptroller's office of vehicle fleet management.

(13) Pooled vehicle--A vehicle normally garaged in a central location for use by any authorized employee of the state agency.

(14) Special purpose vehicle (SPV)--A motor vehicle commercially designed to be used primarily for purposes other than to provide transportation service for personnel, supplies, or equipment.

(15) State agency--

(A) any department, commission, board, office, council, or other agency in the executive branch of state government created by the constitution or by a statute of this state;

(B) the Supreme Court of Texas, the Court of Criminal Appeals of Texas, a court of civil appeals, or the Texas Judicial Council; and

(C) an institution of higher education as defined in Education Code, §61.003.

(16) State employee--A person employed by a state agency, or an elected or appointed state official.

(17) State vehicle--Any state-owned vehicle which is propelled by a self-contained engine and is licensed to operate on public highways.

(18) Transfer date--The date a vehicle is transferred from one state agency to another.

(19) Vehicle Fleet Management System--A computerized data retrieval system to assist each state agency in the management of its vehicle fleet.

(20) Vehicle inventory--A list of state agency vehicles by type and class which is utilized to determine their average cost of operation.

§20.432. Office of Vehicle Fleet Management.

(a) Through the Office of Vehicle Fleet Management, the comptroller administers the state vehicle fleet management program which consists of the State Vehicle Fleet Management Plan and a computerized Vehicle Fleet Management System.

(b) The comptroller will implement and monitor, at the direction of the Council on Competitive Government (CCG), the State Vehicle Fleet Management Plan, approved and adopted by CCG. A current Plan is available for viewing at the comptroller's Website. The Plan delineates the responsibilities of each state agency, institution of higher education and OVFM to develop, implement, maintain, and monitor current vehicle fleet data as required by the Plan.

(c) The comptroller may, for a fee, offer vehicle fleet maintenance services to all state agencies in Travis County on a full cost recovery basis. The services include preventive maintenance and routine mechanical repair work. The comptroller may negotiate contracts or service arrangements for major overhauls and extensive mechanical work.

(d) The computerized Vehicle Fleet Management System is a database that contains information on vehicle inventories, maintenance and repair history, mileage, fuel usage, and expenses incurred for all state agencies.

(e) The comptroller may sponsor an annual fleet management conference to consider:

(1) adjustments to the Vehicle Fleet Management System;

(2) current fleet management issues; and

(3) the improvement of fleet management expertise among state agencies.

§20.433. State Vehicle Fleet Management Plan.

In accordance with the Plan, developed by OVFM under the direction of CCG, the comptroller will adhere to all requirements detailed in the Plan, including, but not limited to the requirements in the following paragraphs of this section.

(1) The disposal of any vehicles declared excess through the routine review of vehicle use. The comptroller will:

(A) follow the Surplus Property Division process for the disposal of vehicles; and

(B) submit proper documentation to certify successful disposal of vehicles declared excess.

(2) The adoption of all detailed policies, procedures and goals related to vehicle replacement, state fuel contracts, alternative fuel use, minimum use criteria, interagency agreements, and fleet consolidation.

(3) The submission of all fleet data required for vehicle inventory, fuel, mileage, repairs and preventive maintenance on an internet-based technology fleet data system.

(4) The review of internal fleet policies and procedures to determine if the fleet management "Best Practices", as determined by OVFM under the direction of CCG, are appropriate and feasible for use by the fleet.

(5) The adherence to the fleet size and vehicle purchasing restrictions established by the Plan adopted on October 11, 2000, and any further fleet size reduction resulting from the ongoing review of vehicle use.

§20.434. Assignment and Use of Pooled Vehicles.

(a) Each vehicle in the comptroller's vehicle fleet pool, with the exception of vehicles assigned to field employees, is assigned to the state agency motor pool and is available for checkout as needed. Some vehicles, because of mission critical status, may be permanently assigned to sub-pools within divisions and available only to employees within those divisions.

(b) Comptroller employees must present a valid Texas driver's license each time a pooled vehicle is checked out.

(c) Pooled vehicle assignments will be made by designated comptroller personnel to ensure that all comptroller vehicles are used and rotated to balance mileage and time usage among all pooled vehicles.

(d) Pooled vehicles assigned on a regular or daily basis to individual administrative or executive employees, require written documentation that the assignment is critical to comptroller's needs and mission of the agency. Documentation for all assigned comptroller vehicles will be kept on file with designated comptroller personnel.

§20.435. Vehicle Fleet Management System.

(a) The Vehicle Fleet Management System is the responsibility of the Office of Vehicle Fleet Management. The comptroller maintains the main repository and database for all vehicle information submitted by each state agency in accordance with this subsection. The comptroller is responsible for developing the form, format, and composition of all data submitted electronically or otherwise to the vehicle fleet management system to assure system continuity.

(b) Each state agency fleet officer is responsible for establishing, maintaining, and submitting to the comptroller on a monthly basis accurate vehicle information in the form and format established by the comptroller.

(1) Information to be recorded in each agency's fleet management system for submission to the comptroller's repository and database includes, but is not limited to:

(A) acquisition date, vehicle make, model, type, class, year, gross vehicle weight rating, exempt license plate number, manufacturer, vehicle identification number, whether a special purpose vehicle, and whether a pool or assigned vehicle;

(B) acquisition cost, capitalized value, repair and maintenance expenses, direct and indirect labor expense, replacement policy, current mileage, vehicle disposal date, and disposal price or salvage value;

(C) type, and quantity of all fuels and lubricants used, including their cost and type, vehicle lifetime odometer reading, and miles traveled per month;

(D) insurance and accident related expense;

(E) downtime, transfer date, disposal date, and any other information necessary to compute the average cost of operation, per month, of the various classes and types of vehicles; and

(F) vehicle location by city and county.

(2) The Vehicle Fleet Management System maintained by the comptroller constitutes the primary instrument used to provide fleet management assistance. Fleet management reports detailing operating trends, cost analysis, and special exception reports listing agencies with unusually high operating expenses will be generated and made available to agency fleet officers.

§20.436. Assistance to State Agencies and School Districts.

(a) The Office of Vehicle Fleet Management of the comptroller facilitates, encourages, and expedites alternative fuels use by state agencies and school districts.

(b) The Office of Vehicle Fleet Management of the comptroller provides informational materials regarding alternative fuels, presents state of the art data at fleet management conferences, provides state vehicle operational data, locates facilities to convert state vehicles to alternative fuels, helps identify vehicles that are appropriate for conversion, and provides technical assistance.

(c) To assist with vehicle conversion, the Office of Vehicle Fleet Management of the comptroller works with state agency fleet operators, vehicle manufacturers and converters, fuel distributors, and any other necessary entities.

(d) The Office of Vehicle Fleet Management provides information to the Texas Commission on Environmental Quality for its determination of air quality benefits associated with the use of alternative fuels.

§20.437. Waiver of Vehicles to Meet Required Fleet Percentages.

(a) Any state agency operating a fleet of more than 15 motor vehicles, excluding law enforcement and emergency vehicles, shall

have a fleet percentage of alternative fuel vehicles equal to or greater than 30% of the total number of such vehicles operated by September 1, 1994, and a percent equal to or greater than 50% by September 1, 1996.

(b) A state agency desiring a waiver from subsection (a) of this section shall submit a certification to the Office of Vehicle Fleet Management of the comptroller that meets one or more of the following conditions:

(1) the vehicles will be operating primarily in an area in which neither the agency nor a supplier has or can reasonably be expected to establish a central refueling station for alternative fuels;

(2) the agency is unable to acquire or be provided equipment or refueling facilities necessary to operate vehicles using an alternative fuel at a projected cost that is reasonably expected to result in no greater net costs than the continued use of traditional gasoline or diesel fuels measured over the expected useful life of the equipment or facilities supplied; or

(3) the agency is unable to acquire or be provided any alternative fuel vehicles or equipment necessary for such vehicles.

(c) The subsection (b) of this section certification must be sent to the Office of Vehicle Fleet Management of the comptroller and must be accompanied by the information described in either subsection (d) or (e) of this section.

(d) A subsection (b)(1) of this section certification shall also contain the:

(1) total number of vehicles in the fleet subject to these rules;

(2) total number of vehicles currently operating on an approved alternative fuel;

(3) percentage of the fleet subject to these rules that is impacted by the requested waiver;

(4) vehicle license plate number of each vehicle to be waived;

(5) city or town nearest to where each vehicle identified in paragraph (4) of this subsection is normally garaged;

(6) name of any alternative fuels vendor or supplier with a stationary supply of fuel within a 10-mile radius, or mobile fuel suppliers within a 30-mile radius of where each vehicle identified in paragraph (4) of this subsection is normally garaged; and

(7) correspondence or other documentation relevant to the request for waiver or reduction.

(e) A subsection (b)(2) of this section certification must be accompanied and supported by a state agency prepared cost benefit analysis for each alternative fuel which includes the following:

(1) total initial cost of providing the entire alternative fuel facility, or a portion thereof, including, but not limited to, the following (if the equipment is provided at no initial cost to the agency and the fuel vendor plans to recoup the initial cost through increased fuel costs, then only those items furnished by the agency such as land shall be included in the total initial cost):

(A) cost of land at current market value, on which to install any compressor station, tanks, and refueling facilities;

(B) cost of compressor and related facilities, including cost of providing operating power, if not already available at the site, any engineering work for site preparation;

(C) cost of refueling and related facilities, including fast and slow refueling stations, refueling tanks;

(D) cost of providing alternative fuel to the site such as gas pipeline;

(E) cost of engine conversion kits and fuel cylinders and/or tanks, including installation costs;

(F) cost of initial training and certification of mechanics, and training of drivers to operate alternative fuel vehicles, if required;

(G) cost of future major overhauls of the compressor system according to the compressor manufacturer's recommended major overhaul schedule (see paragraph (7) of this subsection);

(H) cost of future major overhauls or replacement of the refueling stations if the expected life is less than 30 years;

(I) costs of future replacement of fuel conversion kits (see paragraph (7) of this subsection); and

(J) any other costs or expenditures necessary to provide a complete, turnkey facility;

(2) total annual mileage expected for the vehicle fleet or for those vehicles covered by the cost study;

(3) total annual fuel savings calculated from the difference between the fuel costs using gasoline/diesel and using alternative fuel for the total annual mileage in paragraph (2) of this subsection;

(4) an estimate of any additional savings such as reduced maintenance costs (e.g., extended oil change intervals, longer spark plug life, and other savings in maintenance);

(5) an estimate of the total annual operating costs, including, but not limited to, the following:

(A) compressor and refueling station maintenance, not replacement cost or cost of major overhaul (see paragraph (1) of this subsection);

(B) cost of labor for removing, testing, and reinstalling alternative fuel cylinders/tanks for inspection and testing;

(C) cost of maintenance and repair of engine conversion kits;

(D) cost of testing fuel cylinders/tanks;

(E) cost of training additional mechanics and labor cost differential, if any, for mechanics and other personnel servicing alternative fuel equipment;

(F) cost of electrical power to operate the compressors and refueling stations; and

(G) other annual costs uniquely associated with the operation of the alternative fuel program;

(6) determine the total annual savings from the difference between the total savings (sum of paragraphs (3) and (4) of this subsection), and the total annual operating costs, paragraph (5) of this subsection;

(7) estimate the expected life of the various components of the system. If accurate lifetimes are not available, the following shall be used:

(A) conversion kits = 15 years (if removed from old and reinstalled on new vehicles; if not reinstalled, use six years for conversion kits for automobiles and small buses, and 10 years for light and medium-duty trucks and large buses);

(B) fuel cylinders/tanks = 30 years (or less if lifetimes are not 30 years); and

(C) compressors = 30 years (or replacement at the time recommended by the compressor manufacturer for the third major overhaul. If not known or not listed by the manufacturer, use 10 years):

(8) determine the capitalized costs of the various components in subsection (e) of this section and then calculate the payback period by using the total capitalized costs; total annual savings, paragraph (6) of this subsection; and 10% cost of money (or the actual interest rate applicable at the time the calculation is made) in standard life cycle cost benefit analysis formulae; and

(9) the comptroller may assist state agencies and school districts in making these calculations.

(f) The director will review the request for waiver or reduction of the requirements of subsection (a) of this section and issue a written waiver or reduction to the state agency or school district. A waiver or reduction may be issued under this section for a period of up to two years, at the discretion of the director. A waiver will be granted on a certification under subsection (b)(2) of this section if the total capitalized cost, P, max. is more than 9.43 times the total annual savings, A, for an expected compressor or system lifetime of 30 years. If the compressor lifetime is less than 30 years, or if a compressor is not used, and the component in subsection (e)(1) of this section with the longest expected lifetime is less than 30 years, a waiver will be granted if the total capitalized costs are more than the following values (if other than 10% interest is used, adjust accordingly).
Figure: 34 TAC §20.437(f)

(g) The comptroller keeps these waivers for up to two years for use in waiving the purchasing restrictions for state agencies in §20.235 of this title (relating to Purchase of Motor Vehicles).

§20.438. Effect of Waiver.
A waiver issued under section §20.437 of this title (relating to Waiver of Vehicles to Meet Required Fleet Percentages) shall be kept on file by the comptroller for two years from date of issuance. A valid, current waiver on file for a state agency shall be deemed sufficient basis for a waiver of the purchasing restrictions for state agencies which are set forth in §20.235 of this title (relating to Purchase of Motor Vehicles).

§20.439. Alternative Fuel Usage.
Pursuant to Government Code, §2171.103, the comptroller shall take all steps necessary to encourage the use of alternative fuels.

(1) Each state vehicle equipped from the manufacturer or modified by a conversion facility to be capable of operating on an alternative fuel shall operate exclusively on the alternative fuel except in cases:

(A) where and when the alternative fuel is not available;

(B) the range of the alternative fuel is insufficient to complete a round trip, in which case the alternative fuel shall be used until exhausted, with conventional gasoline or diesel fuel used only as a last resort to complete the trip when the alternative fuel is unavailable;

(C) when the alternative fuel costs more than conventional gasoline or diesel;

(D) when the conversion equipment is not in working order or is deemed unsafe to operate, in which case timely repairs or inspections shall be made so that the vehicle may continue to operate on the alternative fuel; or

(E) when operating exclusively on an alternative fuel is contrary to the vehicle manufacturer's or alternative fuel conversion equipment vendor's recommendations.

(2) Each state agency will be required to provide fuel usage data semi-annually in accordance with §20.435(b)(2) of this of this title (relating to Vehicle Fleet Management System) on every vehicle capable of using alternative fuels through the Vehicle Fleet Management System.

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

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DIVISION 4. UNIFORM GRANT AND CONTRACT STANDARDS

34 TAC §§20.456 - 20.467

The Comptroller of Public Accounts proposes new §20.456, concerning introduction; §20.457, concerning purpose, applicability, and scope; §20.458, concerning effective date; §20.459, concerning adoption by reference; §20.460, concerning grants and contracts; §20.461, concerning standard assurances; §20.462, concerning variance from standards; §20.463, concerning obtaining copies of standards; §20.464, concerning recommendations for change; §20.465, concerning uniform cost principles and cost allocation plans; §20.466, concerning uniform administrative, accounting, reporting, and auditing standards; and §20.467, concerning state of Texas single audit circular.

The comptroller proposes to rename Chapter 20 Statewide Procurement and Support Services and rename Subchapter E Special Categories of Contracting. New §§20.456 - 20.467 will be part of Subchapter E, under new Division 4, Uniform Grant and Contract Standards.

New §20.456 incorporates the provisions of former §20.421 in the reorganization of Chapter 20, revises it to exclude outdated internal and past rule and guidance references, and revises it to clarify that these rules were transferred from the governor's office to the comptroller.

New §20.457 incorporates the provisions of former §20.422 in the reorganization of Chapter 20.

New §20.458 incorporates the provisions of former §20.423 in the reorganization of Chapter 20.

New §20.459 incorporates the provisions of former §20.424 in the reorganization of Chapter 20 and clarifies that the governor's office adopted rules in the past.

New §20.460 incorporates the provisions of former §20.425 in the reorganization of Chapter 20.

New §20.461 incorporates the provisions of former §20.426 in the reorganization of Chapter 20.

New §20.462 incorporates the provisions of former §20.427 in the reorganization of Chapter 20 and revises it to refer to the comptroller instead of the governor's budget and planning office.

New §20.463 incorporates the provisions of former §20.428 in the reorganization of Chapter 20 and revises it to refer to the comptroller instead of the governor's budget and planning office.

New §20.464 incorporates the provisions of former §20.429 in the reorganization of Chapter 20 and revises it to refer to the statewide procurement division of the comptroller instead of the governor's budget and planning office.

New §20.465 incorporates the provisions of former §20.430 in the reorganization of Chapter 20.

New §20.466 incorporates the provisions of former §20.431 in the reorganization of Chapter 20.

New §20.467 incorporates the provisions of former §20.432 in the reorganization of Chapter 20.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rules will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the comptroller's procedures for statewide procurement and support services. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the proposed rules may be submitted to Amy Comeaux, Statewide Procurement Division, at amy.comeaux@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposals in the *Texas Register.*

The new sections are proposed under Government Code, §§403.023, 783.004, 2113.103, 2155.0012, 2156.0012, 2171.002, 2172.0012, 2172.006, and 2176.110.

The following statutes are affected by the new sections: Government Code, Title 7, Chapter 783, Government Code Title 10, Subtitle D, Chapter 2176, and Government Code §§2113.103, 2171.002, 2171.054, 2171.056, 2171.104, 2171.1045, and 2172.006.

§20.456. Introduction.

The rules in this Division were transferred from the governor's office to the comptroller by publication effective September 1, 2011. The Uniform Grant Management Standards were developed under the authority of Government Code, Chapter 783, which codifies the Uniform Grant and Contract Management Standards Act of 1981. The federal circulars have been renamed and extensively modified to reflect state law, policies and practice. Pursuant to the Act and Government Code, Chapter 2105, the prescribed standard financial management conditions and uniform assurances are applicable to all grants and grant agreements executed between state agencies, local governments and other affected entities, as described in §20.457(b) of this title (relating to Purpose, Applicability, and Scope).

§20.457. Purpose, Applicability, and Scope.

(a) Purpose. The Uniform Grant and Contract Management Act of 1981 directed the governor's office to establish uniform grant and contract administration procedures "to promote the efficient use of public funds in local government and in programs requiring cooperation among local, state, and federal agencies." These standards further that objective by providing awarding agencies and grantees a standardized set of financial management procedures and definitions, by requiring consistency among grantor agencies in their dealings with grantees, and by ensuring accountability for the expenditure of public funds. State agencies are required to adhere to these standards when administering grants and other financial assistance agreements with cities, counties and other political subdivisions of the state.

(b) Applicability. Government Code, Chapter 783 specifically applies the standards only to state and local governments. School districts, state colleges and universities and special districts are specifically excluded by law from having to comply with these standards. However, to further consistency and accountability, some state agencies have applied these standards by rule or contract to all of their grantees. In addition, Government Code, Chapter 2105, (§20.467(c) of this title (relating to State of Texas Single Audit Circular)) subjects all subrecipients of federal block grants to the standards. Therefore, recipients and subrecipients other than state and local governments, including nonprofit organizations, should ascertain from their awarding agencies whether or to what extent they are subject to these standards. In the event of a conflict between UGMS and applicable federal law, the provisions of federal law shall apply.

(c) Scope. These standard financial management conditions and uniform assurances are applicable to all grants, cooperative agreements, contracts and other financial assistance arrangements executed between state agencies, local governments and any other subrecipient not specifically excluded by state or federal law. Contracts for the sole purpose of procuring goods or services on a competitive basis, in which there is a clear purchaser-vendor relationship, as opposed to a grantor-recipient relationship, are excluded from the requirements of these standards (see Uniform Assurances and Standard Conditions Required: Variations (See State Uniform Administrative Requirements for Grants and Cooperative Agreements, Subpart A(3) definition of "grantee"). State agencies may deviate from these standards only if the agency has complied with Government Code, §783.007(c), Uniform Assurances and Standard Conditions Required: Variations (See State Uniform Administrative Requirements for Grants and Cooperative Agreements, Subpart A(6)(a)).

§20.458. Effective Date.

The effective date of the uniform cost principles and administrative requirements is 20 days following final adoption in the Texas Register. Grants, contracts and other financial assistance agreements entered into prior to the adoption date of these standards will be subject to the provisions of the Uniform Grant and Contract Management Standards dated February 22, 1990. The State of Texas Single Audit Circular is effective for single audits of fiscal years beginning after June 30, 1996. However, if an awarding state agency has already adopted rules in codified regulations governing single audits of non-state entities for fiscal years beginning after June 30, 1996, the agency shall apply the standards set forth in this single audit circular for audits of fiscal years beginning after June 30, 1997.

§20.459. Adoption by Reference.

As directed by the Act, the Governor's Office of Budget and Planning adopted by reference Office of Management and Budget Circular A-87, as annotated and revised; the Common Rule of OMB Circular A-102, as annotated and revised; and OMB Circular A-133, as annotated and revised. These circulars have been renamed, respectively, "Cost Principles for State and Local Governments and Other Affected Entities", "State Uniform Administrative Requirements for Grants and Cooperative Agreements", and "State of Texas Single Audit Circular". These

circulars, adopted effective February 12, 1998, have been further annotated and revised for clarity and to reduce audit costs.

§20.460. Grants and Contracts.

The terms "grants" and "contracts" as used in the Uniform Grant Management Standards are synonymous only when used to describe a financial agreement involving an awarding agency and a recipient or subrecipient. Procurement contracts or agreements in which there is a clear purchaser-vendor relationship are not covered by the Uniform Grant Management Standards.

§20.461. Standard Assurances.

A listing of major state assurances which may apply to federal pass-through and state-appropriated funds may be found in the State Uniform Administrative Requirements for Grants and Cooperative Agreements, Subpart B, §___.14. Many of these assurances apply only to state agencies, and in most cases, only some will apply to a given grant. This list is subject to change, and it is the applicant's responsibility to determine which assurances are required and that all those required by the awarding agency are submitted.

§20.462. Variance from Standards.

State agencies may vary from the Uniform Grant Management Standards (UGMS) only when required to do so by federal legislation or regulations or by specific state statute. State agencies are required to publish the variance in the Texas Register and to notify the comptroller. State agencies' rules or self-regulation are not sufficient to authorize variance from the provisions contained in the UGMS.

§20.463. Obtaining Copies of Standards.

The comptroller will supply copies for state agency use. However, it is the responsibility of the state agency to reproduce the number of copies to fulfill grantee requirements. State agencies may incorporate the UGCMS into their manuals either directly or by reference.

§20.464. Recommendations for Change.

State agencies are requested to submit any recommended changes, or to note inconsistencies or conflicts, in writing to the division.

§20.465. Uniform Cost Principles and Cost Allocation Plan.

(a) The Uniform Grant Management Standards (UGMS), Chapter II, "Cost Principles for State and Local Governments and Other Affected Entities" sets out the basic cost principles applicable to all grants administered by a state agency which are awarded to cities, counties, other political subdivisions of the state and entities receiving state-administered funds from federal block grants. This chapter specifically includes, therefore, all federal categorical grants, federal block grants, and state grants.

(b) The basis of Chapter II is OMB Circular A-87, which designates the Department of Health and Human Services (HHS) as the federal agency responsible for issuing instructions for use by grantees in the preparation of cost allocation plans. OMB Circular A-87 is included in its entirety, with annotations showing differences between federal and state law and practices.

(c) Cities, counties, and other political subdivisions of the state seeking to establish a cost allocation plan and indirect cost rate should contact the federal Office of Management and Budget to request an assignment of a cognizant federal agency to review and approve any such plan. In those cases in which funds are received from two or more state agencies, recipients should contact the Governor's Budget and Planning Office to receive an assignment of a state single audit coordinating agency. This agency may, but is not required, to review and approve the cost allocation plan.

§20.466. Uniform Administrative, Accounting, Reporting, and Auditing Standard.

The basis of the Uniform Grant Management Standards (UGMS) Chapter III, "State Uniform Administrative Requirements for Grants and Cooperative Agreements," is the Common Rule of OMB Circular A-102, which has been adopted by reference in §20.459 of this title (relating to Adoption by Reference). Applicable provisions of the Common Rule have been reprinted in UGMS, with annotations showing where state law and practices differ from the Common Rule. (See "State Uniform Administrative Requirements for Grants and Cooperative Agreements," Subpart A--General, §___.4 for applicability to state and federal funds.)

§20.467. State of Texas Single Audit Circular.

(a) The basis of the Uniform Grant Management Standards (UGMS) Chapter IV, "State of Texas Single Audit Circular," is Office of Management and Budget (OMB) Circular A-133. This state audit circular is to be used in conducting single audits of state financial assistance to recipients and subrecipients. All awarding agencies are responsible for ensuring compliance with OMB Circular A-133 when federal funds are involved and for coordinating the single audit of state funds with affected federal agencies when both federal and state funds are awarded.

(b) The concept of single audit is designed to maximize the efficient and effective use of public resources, to minimize work flow disruptions for grant recipients and to provide state awarding agencies consistent audit procedures and assurances. Under these rules, a designated state single audit coordinating agency will assure that the single audit effort is well-coordinated among state funding agencies and with the federal cognizant agency. The federal cognizant agency is responsible for assuring that the independent audit is performed for federal funds in accordance with the provisions of OMB Circular A-133. No attempt is made to emulate the federal cognizant agency by the designation of the state single audit coordinating agency. Rather, the purpose is to provide an audit coordination effort at the state level to bolster the single audit concept. It must be thoroughly understood that the single audit process is available but will not replace state agency program monitoring and review of subrecipients' compliance with contractual terms and conditions throughout the grant period. As indicated by Circular A-133 and this state single audit circular, any supplemental audit work should build upon the audit accomplished by the single audit.

(c) Government Code, Chapter 2105, requires that all subrecipients of federal block grants be included under provisions of the Uniform Grant and Contract Management Standards.

(1) When a single audit is needed and two or more state agencies provide funds to a recipient covered by this circular, the subrecipient may request the designation of a state single audit coordinating agency from the director. If only one state agency provides funds, no state single audit coordinating agency will be necessary and the grant recipient should work directly with its state funding agency.

(2) To have a state single audit coordinating agency designated, a recipient must submit a written request to the division. This request must list the state agencies providing financial assistance with the grant amounts for the year to be audited and indicate that the governing body has authorized the initiation of the single audit.

(3) Within 30 days after the receipt of the request, the director, after consultation with the state auditor, will designate a state single audit coordinating agency. The following criteria will be used in selecting the appropriate state single audit coordinating agency:

(A) state agency request or agreement to be the coordinating agency;

(B) state agency capability;

(C) amount and source of funds awarded to the grantee; and

(D) state agency workload.

(4) Request for change. A state agency or a recipient may request a change in the designation of the state single audit coordinating agency. The designation of a state single audit coordinating agency will remain in force until eliminated or revised by the director. All previous state single audit coordinating agency designations by the director will become the state single audit coordinating agencies upon the effective date of these rules.

(d) At the earliest practical date, but not later than 60 days prior to beginning a single audit, the recipient shall notify the state grantor agencies and the state single audit coordinating agency that the audit plan is being formulated. Each state grantor agency should assure that special audit issues are identified and transmitted to the recipient during this early warning period. Any subsequent additional costs of compliance which are outside the scope of OMB Circular A-133 or the State of Texas Single Audit Circular are allowable expenses to the contract being audited, as long as they are paid from nonfederal funds. The state single audit coordinating agency shall have an opportunity to review the scope of the audit and, at its option, participate in an engagement conference with the independent auditor prior to commencement of the single audit. The state single audit coordinating agency shall contact the federal cognizant agency at the earliest practicable point as necessary to coordinate when federal and state funds are involved.

(e) The state single audit coordinating agency must be provided a completed audit report by the recipient. A desk review will be accomplished by the state single audit coordinating agency to determine that the audit report covers the major elements of the State of Texas Single Audit Circular. Upon receipt of the audit report, the state single audit coordinating agency is responsible for carrying out the duties described in § ___400(a)(1)-(8), Uniform Grant Management Standards.

(f) When the state single audit coordinating agency determines that the audit report meets the report requirements of this audit circular, the recipient will be so notified by letter and instructed to distribute the audit report to all state funding agencies for their review. A copy of the notification letter should accompany the distributed reports.

(g) Each state funding agency is responsible for reviewing the portion of the audit dealing with its programs and is also responsible for the necessary follow-up and resolution of audit findings that relate to its individual programs. Each affected state funding agency must notify the state single audit coordinating agency after the audit findings have been resolved as required by the appropriate funding agencies.

(h) The recipient must notify the state single audit coordinating agency and the state grantor agencies when cross-cutting audit findings have been resolved.

(i) If assigned, the federal cognizant agency is responsible for negotiating, approving and auditing indirect cost allocation plans. In the absence of a signed negotiation agreement from the federal cognizant agency, the state single audit coordinating agency, may, at its discretion, perform these duties as they pertain to state funds. In the event that neither the federal cognizant agency nor the state single audit coordinating agency performs these duties, the major state funding agency or another state agency designated by the governor's office may perform these duties as they pertain to state funds.

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

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DIVISION 5. COMMEMORATIVE ITEMS

34 TAC §20.475

The Comptroller of Public Accounts proposes new §20.475, concerning purchase price of commemorative items.

The comptroller proposes to rename Chapter 20 Statewide Procurement and Support Services and rename Subchapter E Special Categories of Contracting. New §20.475 will be part of Subchapter E, under new Division 5, Commemorative Items.

New §20.475 incorporates the provisions of former §20.148 in the reorganization of Chapter 20 and revises it to refer to the comptroller instead of the commission.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the comptroller's procedures for statewide procurement and support services. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposed rule may be submitted to Amy Comeaux, Statewide Procurement Division, at amy.comeaux@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposals in the *Texas Register.*

The new section is proposed under Government Code, §§403.023, 783.004, 2113.103, 2155.0012, 2156.0012, 2171.002, 2172.0012, 2172.006, and 2176.110.

The following statutes are affected by the new section: Government Code, Title 7, Chapter 783, Government Code Title 10, Subtitle D, Chapter 2176, and Government Code §§2113.103, 2171.002, 2171.054, 2171.056, 2171.104, 2171.1045, and 2172.006.

§20.475. Purchase Price of Commemorative Items.

Pursuant to Government Code, §2172.006, the purchase price of an official state lapel pin, and an official state ring for purchase by members and former members of the Texas House of Representatives and the Texas Senate is established in this section. Price may be adjusted periodically by written approval of the director based on changes to the

cost of precious metals or labor. The initial prices for the items are as follows:

(1) Lapel pin in 14k yellow gold and platinum is $1197.25.

(2) Lapel pin in 18k yellow gold and platinum is $1245.82.

(A) Lapel pin for Texas House of Representatives.
Figure: 34 TAC §20.475(2)(A)

(B) Lapel pin for Texas Senate.
Figure: 34 TAC §20.475(2)(B)

(3) Large 14k yellow gold and platinum ring is $1221.25.

(4) Large 18k yellow gold and platinum ring is $1323.22.

(5) Small 14k yellow gold and platinum ring is $1109.06.

(6) Small 18k yellow gold and platinum ring is $1183.68.

(7) Texas House of Representative ring.
Figure: 34 TAC §20.475(7)

(8) Texas Senate ring.
Figure: 34 TAC §20.475(8)

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

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SUBCHAPTER F. CONTRACT MANAGEMENT

DIVISION 1. CONTRACT ADMINISTRATION

34 TAC §§20.481 - 20.488

The Comptroller of Public Accounts proposes new §20.481, concerning definitions; §20.482, concerning quality assurance; general; §20.483, concerning inspection and/or testing; §20.484, concerning testing facilities and/or laboratories; §20.485, concerning cost of testing; §20.486, concerning contract administration; §20.487, concerning invoicing standards; and §20.488, concerning payments.

The comptroller proposes to rename Chapter 20 Statewide Procurement and Support Services and rename Subchapter F Contract Management. New §§20.481 - 20.488 will be part of Subchapter F, under new Division 1, Contract Administration.

New §20.481 incorporates former §20.221 in the reorganization of Chapter 20 and revises it to define terms used exclusively in Subchapter F.

New §20.482 incorporates former §20.71 in the reorganization of Chapter 20, revises it to refer to the comptroller instead of the General Services Commission, and to reflect the discretionary authority authorized by statute.

New §20.483 incorporates former §20.72 in the reorganization of Chapter 20, revises it to refer to the division instead of the central procurement division or vendor relation program, the comptroller instead of the GSC, and to contractor instead of vendor.

New §20.484 incorporates former §20.74 in the reorganization of Chapter 20.

New §20.485 incorporates former §20.75 in the reorganization of Chapter 20.

New §20.486 incorporates former §20.39 in the reorganization of Chapter 20 and revises it to delete references to TBPC or the commission and instead refer to the comptroller or director, as appropriate.

New §20.487 incorporates former §20.225 in the reorganization of Chapter 20 and revises the contract payment request process to reflect current comptroller procedures for a contractor submitting an invoice to a state agency and the state agency requesting payment from the comptroller.

New §20.488 incorporates former §20.227 in the reorganization of Chapter 20 revises the payment process to reflect current procedures for contract payments to be made by the comptroller to a state agency, the state agency to pay the contractor, and methods for addressing disputed invoices and payments.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rules will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the comptroller's procedures for statewide procurement and support services. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the proposals may be submitted to Amy Comeaux, Statewide Procurement Division, at amy.comeaux@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposals in the *Texas Register.*

The new sections are proposed under Government Code, §§2155.0012, 2156.0012, 2251.003, and Local Government Code, §271.082.

The following statutes are affected by the new sections: Government Code, §§481.1855, 2101.035, 2101.041, 2155.069, 2155.070, 2155.075, 2155.0755, 2155.076, 2155.077, 2155.088, 2155.089, 2155.324, 2155.325, 2155.381, 2155.382, 2251.001, 2251.021, 2251.022, 2251.023, 2251.024, 2251.025, 2251.026, 2251.042, 2261.257, 2262.055, 2262.253, and Local Government Code, §271.082.

§20.481. Definitions.

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

(1) Bona fide dispute--A difference of opinion held in good faith by a vendor and a governmental entity.

(2) Disputed invoice--Includes, but is not limited to, an invoice presented for payment which is:

(A) not in compliance with the invoicing standards in this chapter;

(B) for nonconforming goods and services under the related purchase order or contract; or

(C) not presented in the time frame authorized by the related purchase order or contract.

§20.482. Quality Assurance; General.

Pursuant to Government Code, §2155.069, the comptroller may establish and maintain a program of testing and inspecting purchases pursuant to a contract administered by the comptroller at the request of state agencies to insure that the materials, supplies, services, and equipment meet specifications.

§20.483. Inspection and/or Testing.

(a) Items are selected for inspection and/or testing under the following conditions:

(1) Notice from a using qualified ordering entity. If a using qualified ordering entity determines that any supplies, materials, services, or equipment received do not meet specifications, it is the responsibility of the qualified ordering entity to notify the division in writing detailing the reasons why the item received does not meet the specifications of the contract.

(2) Notice from purchaser. The various purchasers within the division may "flag" purchase orders at time of issue with a request for inspection and/or testing of the items purchased after their arrival at the receiving qualified ordering entity.

(3) Previous experience with products and/or vendors. The comptroller's inspector may direct inspections and/or testing of products based on previous experience of deficiency of the products or of vendors delivering products other than those specified on the purchase order.

(4) Items selected at random. The comptroller's inspector may direct inspections and/or testing of items selected from purchase orders at random for spot checking.

(5) Request from contractor. A contractor may request the inspection of items purchased prior to or after delivery of the items to the qualified ordering entity. Such inspections are made only upon the approval of the director.

(6) Certificate and/or test report from independent testing laboratory. When deemed necessary, the division may require a respondent and/or the contractor to supply a certificate and/or a test report from an independent testing laboratory showing that the product offered or delivered meets or exceeds the requirements of the specification and/or contract.

(7) In-plant inspection. When approved by the director, certain items may be inspected by comptroller personnel or the comptroller's designated agent in the plant of the manufacturer during the process of manufacture. Examples of the type of items so inspected include school buses, paint, retreating rubber for tires, etc. Products not meeting specifications may be rejected prior to shipment.

(b) Qualified ordering entities shall be responsible for the initial inspection and testing of all purchases. Inspection and testing will be done in accordance with instructions issued by the division. Appropriate forms may be devised to assist the qualified ordering entities in carrying out this duty.

(c) In addition to random inspections, the director may direct that follow-up inspections be conducted of purchases which fail initial agency inspections to verify if specifications are met. The director will coordinate with the purchaser as required to carry out these duties.

(d) Reports of findings on inspections and/or tests of materials, supplies, services, and equipment are filed with the division for recording and/or proper action to eliminate the problem.

§20.484. Testing Facilities and/or Laboratories.

Testing may be performed by any of the following facilities or laboratories:

(1) comptroller laboratory;

(2) laboratories of other state agencies, universities, institutions, etc. (interagency contracts);

(3) independent commercial testing laboratories; or

(4) any other testing facility or laboratory which the comptroller may deem qualified to test the product in question.

§20.485. Cost of Testing.

(a) In the event the product tested fails to meet or exceed all conditions and requirements of the specification and/or contract, the cost of the sample used and the cost of the testing shall be borne by the supplier.

(b) In the event the product tested meets and/or exceeds all conditions and requirements of the specification and/or contract, but the item and/or test sample is destroyed in the testing process, then the cost of the item or test sample used shall be borne by the supplier.

§20.486. Contract Administration.

(a) Inspection of merchandise.

(1) Qualified ordering entities must inspect all shipments received against orders and report any discrepancies to the comptroller immediately.

(2) If unlisted shortages are discovered, the contractor and the comptroller must be notified immediately. Unless shipments are checked immediately upon arrival and such shortage reports are made within 15 days, the contractor cannot be held responsible for shortages.

(3) A contractor may be required to pick up any merchandise not conforming to specifications and replace the merchandise immediately.

(b) Substitutions. Substitution of items called for in a contract is not permitted without the prior approval of the director. No such approval will be granted unless substituted items are of equal quality and are offered at the same or lower price.

(c) Cancellations.

(1) Cancellations on orders issued by the comptroller's statewide procurement division, either on the part of the vendor or a qualified ordering entity, are not permitted without the prior written approval of the comptroller's statewide procurement division.

(2) Orders may be canceled without the contractor's consent due to unsatisfactory performance or nonperformance by the contractor.

(3) Orders may not be canceled without first obtaining the consent of the contractor if the reason for cancellation is not the fault of the contractor.

(4) A contract or a portion of a contract may be canceled on request of the contractor if the contractor is unable to perform due to circumstances beyond its control. In these instances, the comptroller's statewide procurement division will consider such requests when presented in writing with proper documentation.

(d) Damages for failure to perform.

(1) A vendor who fails to perform as required under a contract shall be liable for actual damages and costs incurred by the state.

(2) If any merchandise delivered under a contract has been used or consumed by an agency and on testing is found not to comply with specifications, no payment may be approved by the comptroller's statewide procurement division for such merchandise until the amount of actual damages incurred has been determined.

(3) The comptroller shall seek to collect damages by following the procedures established by the Office of the Attorney General for the collection of delinquent obligations.

§20.487. Invoicing Standards.

(a) To receive payment, a contractor must submit an invoice to the state agency receiving the goods or services. The invoice should include, but is not limited to including:

(1) the contractor's mailing and e-mail (if applicable) address;

(2) the contractor's telephone number;

(3) the name and telephone number of a person designated by the contractor to answer questions regarding the invoice;

(4) the state agency's name, agency number, and delivery address;

(5) the state agency's purchase order number, if applicable;

(6) the contract number or other reference number, if applicable;

(7) a valid Texas identification number (TIN) issued by the comptroller;

(8) a description of the goods or services, in sufficient detail to identify the order which relates to the invoice;

(9) unit numbers corresponding to the amount of the invoice;

(10) if submitting an invoice after receiving an assignment of a contract, the TIN of the original contractor and the TIN of the successor vendor;

(11) other relevant information supporting and explaining the payment requested.

(b) Disputed invoices should be immediately returned to the contractor but in no event later than the 21st day after the agency receives the invoice. When a correct and complete invoice is received by the state agency, the state agency shall date stamp the invoice and maintain it with the other contract documents. A state agency may accept a partial delivery of goods or services and an invoice for payment of the portion of the goods or services delivered.

(c) A state agency may request payment for an invoice from the comptroller only after the state agency has:

(1) received, inspected, and accepted delivery of the goods or services covered by the invoice; and

(2) received and accepted a complete and accurate invoice.

(d) In order to request payment from the comptroller, the state agency shall submit the data or information to the comptroller for payment through and according to the requirements of the statewide accounting system administered by the comptroller. A state agency submitting a payment request to the comptroller certifies that:

(1) the goods or services were received in accordance with the purchase order; and

(2) the invoice is correct and properly payable.

§20.488. Payments.

(a) If the payment request has been submitted according to the statewide accounting system requirements and these rules, the comptroller shall initiate payment to the state agency for the amount identified in the payment request by:

(1) electronic funds transfer; or

(2) warrant.

(b) A payment is not overdue if the payment is made by the comptroller by the distribution date as defined in Government Code, §2251.001.

(c) Any payment owed by an agency must be mailed or transmitted electronically to the contractor no later than 30 days after the later of the day:

(1) on which the agency received the goods;

(2) the performance of the service under the contract is completed; or

(3) on which the agency received the invoice for goods or services.

(d) Overdue payments, or the unpaid balance of a partially paid invoice amount, will accrue interest at the interest rate in effect on September 1 of the fiscal year in which the payment becomes overdue. The rate in effect on September 1 is equal to the sum of:

(1) one percent; and

(2) the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday.

(e) The unpaid balance of a partial payment made within the 30 day period provided by this section accrues interest as provided by subsection (c) of this section unless the balance is in dispute.

(f) If the state agency has returned a disputed invoice to the contractor and the state agency and the contractor resolve the dispute in favor of the vendor, the vendor is entitled to receive interest on the unpaid balance of the invoice submitted by the vendor in accordance with this subsection.

(g) If the state agency returned a disputed invoice to the contractor and the state agency and the contractor resolve the dispute in favor of the agency, the contractor shall submit a corrected invoice. The invoice shall be reviewed according to this division starting from the date of the corrected invoice.

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

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DIVISION 2 REPORTS AND AUDITS

34 TAC §§20.506 - 20.512

The Comptroller of Public Accounts proposes new §20.506, concerning state agency reporting of contracting information; §20.507, concerning required posting of certain contracts; enhanced contract and performance monitoring; §20.508, concerning retention of contract and related documents by state agencies; §20.509, concerning performance reporting; §20.510, concerning auditing of purchase related documentation; §20.511, concerning contracts with value exceeding $1 million; and §20.512, concerning applicability; exclusions.

The comptroller proposes to rename Chapter 20 Statewide Procurement and Support Services and rename Subchapter F Contract Management. New §§20.506 - 20.512 will be part of Subchapter F, under new Division 2, Reports and Audits.

New §20.506 requires state agencies to report contract activity according to §5.302 of this title as required by recently enacted legislation.

New §20.507 requires state agencies to post contract information to their web site and develop procedures to identify and monitor contracts as required by recently enacted legislation.

New §20.508 incorporates former §20.216 in the reorganization of Chapter 20 and requires state agencies to retain contract documentation and specifies document retention time periods.

New §20.509 incorporates former §20.108 in the reorganization of Chapter 20, revises it to refer to the comptroller instead of the commission, identifies the requirements for rating a contractor's performance, and implements new contractor performance grading as required by recently enacted legislation.

New §20.510 incorporates former §20.48 in the reorganization of Chapter 20.

New §20.511 identifies the requirements to report on contracts over $1 million in compliance with recently enacted legislation.

New §20.512 implements the statutory exception to the application of the vendor reporting requirements as authorized by recently enacted legislation.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rules will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the comptroller's procedures for statewide procurement and support services. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the proposals may be submitted to Amy Comeaux, Statewide Procurement Division, at amy.comeaux@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposals in the *Texas Register.*

The new sections are proposed under Government Code, §§2155.0012, 2156.0012, 2251.003, and Local Government Code, §271.082.

The following statutes are affected by the new sections: Government Code, §§481.1855, 2101.035, 2101.041, 2155.069, 2155.070, 2155.075, 2155.0755, 2155.076, 2155.077, 2155.088, 2155.089, 2155.324, 2155.325, 2155.381, 2155.382, 2251.001, 2251.021, 2251.022, 2251.023, 2251.024, 2251.025, 2251.026, 2251.042, 2261.257, 2262.055, 2262.253, and Local Government Code, §271.082.

§20.506. State Agency Reporting of Contracting Information.

(a) A state agency using the centralized accounting, payroll, and personnel system (CAPPS), or any successor system used to implement the enterprise resource planning component of the uniform statewide accounting project developed under Government Code, §2101.035 and §2101.036, shall use CAPPS to provide to the comptroller the contract and purchasing information required pursuant to §5.302 of this title (relating to State Agency Reporting of Contracting Information).

(b) State agencies shall report contract information as required by the Legislative Budget Board Detailed Contract Reporting Requirements provided on the Legislative Budget Board web site.

§20.507. Required Posting of Certain Contracts; Enhanced Contract and Performance Monitoring.

(a) For each contract for the purchase of goods or services from a private vendor, each state agency shall post on its Internet website:

(1) each contract the agency enters into, including contracts entered into without inviting, advertising for, or otherwise requiring competitive bidding before selection of the contractor, until the contract expires or is completed;

(2) the statutory or other authority under which a contract that is not competitively bid under paragraph (1) of this subsection is entered into without compliance with competitive bidding procedures; and

(3) the request for proposals related to a competitively bid contract included under paragraph (1) of this subsection until the contract expires or is completed.

(b) A state agency may post contracts described by subsection (a) of this section that are valued at less than $15,000 once a month.

(c) Each state agency by rule shall establish a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body or, if the agency is not governed by a multimember governing body, the officer who governs the agency. The agency's contract management office or procurement director shall immediately notify the agency's governing body or governing official, as appropriate, of any serious issue or risk that is identified with respect to a contract monitored under this subsection.

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

§20.508. Retention of Contract and Related Documents by State Agencies.

(a) In compliance with Government Code, §441.1855 and the Act, a state agency shall maintain sufficient records and reports to verify compliance with Government Code, §2155.083, the Act and these rules, including:

(1) each contract entered into by the state agency by the agency pursuant to the Act and these rules;

(2) all contract solicitation documents related to the contract;

(3) all documents that reflect and identify the basis for any agency decisions relating to a procurement, including actions taken which deviate from requirements or recommendations in the state procurement manual or contract management guide;

(4) all purchase orders, change orders, and invoices associated with the contract;

(5) all contract amendments, renewals, or extensions executed by the agency; and

(6) all other documents necessary to record the full execution and completion of the each contract.

(b) Pursuant to Government Code, §441.1855, a state agency may only destroy the contract and documents only after the seventh anniversary of the date:

(1) the contract is completed or expires; or

(2) all issues that arise from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the contract or documents are resolved.

§20.509. Performance Reporting.

(a) No later than 30 days after the completion or termination of a purchase order or contract, the purchasing state agency shall review the contractor's performance of the purchase order or contract as provided in this section. State agencies shall file a report on a contractor's performance for any purchase of goods or services:

(1) of $25,000 or more from contracts administered by the comptroller;

(2) made through an agency's delegated authority;

(3) made pursuant to the authority in Government Code, Title 10, Subtitle D; or

(4) for which a state agency is required to use the best value standard.

(b) A state agency shall:

(1) evaluate the contractor's performance based on:

(A) information prepared by the agency in planning the procurement that assessed the need for the purchase together with the specifications for the good or service and the criteria to evaluate the responses resulting in an award and contract;

(B) compliance with the material terms of the contract;

(C) ability to correct instances of contractual non-compliance; and

(D) other evaluation criteria presented in the on-line vendor performance tracking system; and

(2) based on the evaluation provided in the system, assign the contractor the letter grade:

(A) "A" if the contractor that delivered the good or service:

(i) that is the best value for the good or service because it complied with all the specifications and evaluation criteria identified in the solicitation documents;

(ii) in full compliance of all material terms of the contract; and

(iii) with complete or substantial customer satisfaction:

(B) "B" if the contractor delivered the good or service:

(i) that is the best value for the good or service because it complied with all specifications and evaluation criteria identified in the solicitation documents;

(ii) in substantial compliance of all material terms of the contract or promptly remedied any instance of non-compliance with the material terms of the contract; and

(iii) with substantial or adequate customer satisfaction:

(C) "C" if the contractor delivered the good or service:

(i) that is the best value for the good or service because it complied with all specifications and evaluation criteria identified in the solicitation documents;

(ii) substantially remedied a majority of the instances of non-compliance with the material terms of the contract; and

(iii) with adequate customer satisfaction:

(D) "D" if the contractor delivered the good or service:

(i) that was not the best value for the good or service because it did not comply with substantially all specifications and evaluation criteria identified in the solicitation documents; or

(ii) in substantial non-compliance of material terms of the contract and failed to remedy a majority of instances of non-compliance with the material terms of the contract:

(E) "F" if the contractor delivered the good or service:

(i) that was not the best value for the good or service because it did not comply with all specifications and evaluation criteria identified in the solicitation documents;

(ii) in substantial non-compliance of material terms of the contract and failed to remedy a majority of instances of non-compliance with the material terms of the contract; or

(iii) in a manner that subjects the contractor to debarment pursuant to Subchapter G of these rules.

(c) This section does not apply to:

(1) an enrollment contract described by 1 TAC §391.205(b)(5); or

(2) a contract of the Employees Retirement System of Texas or the Teacher Retirement System of Texas except for a contract with a nongovernmental entity for claims administration of a group health benefit plan under Insurance Code, Title 8, Subtitle H.

§20.510. Auditing of Purchase Related Documentation.

(a) General. The comptroller audits payment vouchers and the associated purchasing documents which establish the basis for the claim for payment from state appropriated funds in accordance with Government Code, Title 10, Subtitle D, §2155.324.

(b) Auditing procedure. The comptroller audits purchasing data for compliance with applicable statutes and rules of the comptroller. The comptroller may determine the extent and method of audits to be performed. Agencies will be required to furnish documentation of both delegated and non-delegated purchases to the comptroller for these audits as needed. Audit fieldwork may be performed at the agency site or remotely.

(c) Agency notification. The comptroller will communicate audit results to the agency head, agency's directors of purchasing, and fiscal and/or business manager. If the results are determined by the comptroller to be unacceptable then delegation of authority for some or all purchase categories may be suspended.

§20.511. Contracts with Value Exceeding $1 Million.

(a) For each contract for the purchase of goods or services that has a value exceeding $1 million, a state agency shall develop and implement contract reporting requirements that provide information on:

(1) compliance with financial provisions and delivery schedules under the contract;

(2) corrective action plans required under the contract and the status of any active corrective action plan; and

(3) any liquidated damages assessed or collected under the contract.

(b) Each state agency shall verify:

(1) the accuracy of any information reported under subsection (a) of this section that is based on information provided by a contractor; and

(2) the delivery time of goods or services scheduled for delivery under the contract.

(c) Except as provided by subsection (d) of this section, a state agency may enter into a contract for the purchase of goods or services that has a value exceeding $1 million only if:

(1) the governing body of the state agency approves the contract and the approved contract is signed by the presiding officer of the governing body; or

(2) for a state agency that is not governed by a multimember governing body, the officer who governs the agency approves and signs the contract.

(d) The governing body or governing official of a state agency, as appropriate, may delegate to the executive director of the agency the approval and signature authority under subsection (c) of this section.

(e) A highway construction, engineering services, or maintenance contract that is in compliance with all applicable laws related to procuring engineering services or construction bidding and that is awarded by the Texas Department of Transportation under Transportation Code, Chapter 223, Subchapter A, is not required to be signed by a member of the Texas Transportation Commission or the executive director of the department. This exception does not apply to expedited highway improvement contracts under Transportation Code, Chapter 223, Subchapter C, a comprehensive development agreement entered into under Transportation Code, Chapter 223, Subchapter E, a design-build contract entered into under Transportation Code, Subchapter F, Chapter 223, or any other contract entered into by the Texas Department of Transportation.

§20.512. Applicability; Exclusions.

(a) Notwithstanding Government Code, §§2261.001, 20.511 and 20.512 apply to the Texas Department of Transportation and to an institution of higher education acquiring goods or services under Education Code, §51.9335 or §73.115.

(b) This section and §20.511 of this title (relating to Contracts with Value Exceeding $1 Million) do not apply to a contract of the Employees Retirement System of Texas or the Teacher Retirement System of Texas except for a contract with a nongovernmental entity for claims administration of a group health benefit plan under Insurance Code, Title 8, Subtitle H.

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

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DIVISION 3. PROTESTS AND APPEALS

34 TAC §§20.531 - 20.538

The Comptroller of Public Accounts proposes new §20.531, concerning purpose; §20.532, concerning protest procedures; §20.533, concerning definitions; §20.534, concerning protests; §20.535, concerning filing requirements; §20.536, concerning delay of solicitation or award; §20.537, concerning action by director; and §20.538, concerning appeal.

The comptroller proposes to rename Chapter 20 Statewide Procurement and Support Services and rename Subchapter F Contract Management. New §§20.531 - 20.538 will be part of Subchapter F, under new Division 3, Protests and Appeals.

New §20.531 identifies the purpose for the protest procedures in this division.

New §20.532 incorporates former §20.41(g) in the reorganization of Chapter 20 and revises it to refer to the comptroller instead of the commission.

New §20.533 incorporates former §20.384(a) in the reorganization of Chapter 20 and revises it to define terms used exclusively in Subchapter F.

New §20.534 identifies the protests that may be filed.

New §20.535 incorporates former §20.384(d) in the reorganization of Chapter 20 and identifies the elements necessary to file a protest and the time periods for filing a protest.

New §20.536 incorporates former §20.384(d) in the reorganization of Chapter 20 and authorizes the director to determine if the solicitation award may proceed after the filing of a protest.

New §20.537 incorporates former §20.384(e) and (f) in the reorganization of Chapter 20 and identifies actions that the director may take on a protest.

New §20.538 incorporates former §20.384(g), (h), and (i) in the reorganization of Chapter 20 and identifies the process to appeal the director's action on a protest.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rules will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the comptroller's procedures for statewide procurement and support services. The proposed amendment would have no fiscal impact on

small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the proposals may be submitted to Amy Comeaux, Statewide Procurement Division, at amy.comeaux@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposals in the *Texas Register.*

The new sections are proposed under Government Code, §§2155.0012, 2156.0012, 2251.003, and Local Government Code, §271.082.

The following statutes are affected by the new sections: Government Code, §§481.1855, 2101.035, 2101.041, 2155.069, 2155.070, 2155.075, 2155.0755, 2155.076, 2155.077, 2155.088, 2155.089, 2155.324, 2155.325, 2155.381, 2155.382, 2251.001, 2251.021, 2251.022, 2251.023, 2251.024, 2251.025, 2251.026, 2251.042, 2261.257, 2262.055, 2262.253, and Local Government Code, §271.082.

§20.531. Purpose.

This division sets forth protest procedures for resolving protests relating to purchasing issues under Government Code, §2155.076.

§20.532. Protest Procedures.

Except as otherwise provided by law, a state agency's protest procedures must be consistent with comptroller's rules. State agencies shall submit a copy of the agency's adopted protest procedures to the comptroller during the post-payment audit of the agency's purchasing documents or upon request by the comptroller.

§20.533 Definitions.

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

(1) Chief clerk--Deputy comptroller of the comptroller.

(2) General counsel--General counsel of the comptroller.

(3) Interested parties--Vendors who submit bids, proposals or other written expressions of interest in response to a specific solicitation for goods or services.

(4) Using agency--A state agency, governmental entity, or other entity involved in the contract.

§20.534. Protests.

(a) A vendor who submitted a written response to a solicitation may file a protest with the director for actions taken by the comptroller on the following:

(1) the solicitation documents or actions associated with the publication of solicitation documents;

(2) the evaluation or method of evaluation for a solicitation; or

(3) the award of a contract.

(b) Under Government Code, §2262.055, any vendor who receives a grade lower than a C in the vendor performance tracking system may file a protest with the director according the protest procedures identified in this division regarding the lower grade assigned to the vendor in the system.

§20.535. Filing Requirements.

(a) To be considered by the comptroller, a protest must be:

(1) in writing and contain:

(A) the specific rule, statute or regulation the protesting vendor alleges the solicitation, contract award or tentative award violated;

(B) a specific description of each action by the division that the protesting vendor alleges is a violation of the statutory or regulatory provision the protesting vendor identified in subparagraph (A) of this paragraph;

(C) a precise statement of the relevant facts including:

(i) sufficient documentation to establish that the protest has been timely filed;

(ii) a description of the adverse impact to the comptroller and the state; and

(iii) a description of the resulting adverse impact to the protesting vendor:

(D) a statement of the argument and authorities that the protesting vendor offers in support of the protest;

(E) an explanation of the subsequent action the vendor is requesting; and

(F) a statement confirming that copies of the protest have been mailed or delivered to the using agency:

(2) signed by an authorized representative and the signature notarized;

(3) filed in the time period specified in this section; and

(4) mailed or delivered to:

(A) the comptroller; and

(B) the using agency.

(b) To be considered timely, the protest must be filed:

(1) by the end of the posted solicitation period, if the protest concerns the solicitation documents or actions associated with the publication of solicitation documents;

(2) by the day of the award of a contract resulting from the solicitation, if the protest concerns the evaluation or method of evaluation for a solicitation;

(3) no later than 10 days after the notice of award, if the protest concerns the award; or

(4) no later than 10 days after a vendor grade of C or lower is posted in the system, if the protest involves a grade assigned to a contractor in the vendor performance tracking system.

§20.536. Delay of Solicitation or Award.

If a timely protest of a solicitation or contract award is filed under this section, the director may, after consultation with the using agency, delay the solicitation or award of the contract if the director makes a determination that the contract must be awarded without delay, to protect the best interests of the state.

§20.537. Action by Director.

(a) Upon receipt of a protest, the director may:

(1) dismiss the protest if:

(A) it is not timely; or

(B) does not meet the requirements of this section:

(2) solicit written responses to the protest from using agencies or other affected vendors; or

(3) attempt to settle and resolve the protest by mutual agreement.

(b) If a protest concerning a solicitation is not resolved by mutual agreement, the director shall issue a written determination that resolves the protest.

(c) If a protest concerning a contractor grade is not resolved by mutual agreement, the director shall make the final determination in writing. If the director determines that the protest has presented a reasonable basis to conclude that the grade was not warranted, then the director shall inform the protesting vendor and the using agency of that determination in writing and the appropriate remedy. If the director determines that the protest did not present a reasonable basis to conclude that the grade was not warranted, then the director shall inform the protesting vendor and the using agency of that determination in writing and dismiss the protest. The director's determination shall be the final administrative action of the comptroller.

§20.538. Appeal.

(a) If a protest is based on a solicitation or contract award, the protesting party may appeal a determination of a protest by the director to the general counsel. An appeal of the director's determination must be in writing and received in the office of the general counsel not later than 10 days after the date the director sent written notice of the director's determination. The scope of the appeal shall be limited to review of the director's determination. The protesting party must mail or deliver to the using agency and all other interested parties a copy of the appeal, which must contain a certified statement that such copies have been provided.

(b) The general counsel may refer the matter to the associate deputy comptroller or chief clerk for consideration or may issue a written decision that resolves the protest.

(c) If the general counsel refers the protest to the associate deputy comptroller or chief clerk, the general counsel shall deliver the information the associate deputy comptroller or chief clerk determines necessary.

(d) A protest or appeal that is not filed timely shall not be considered unless good cause for delay is shown or the chief clerk determines that an appeal raises issues that are significant to agency procurement practices or procedures in general.

(e) A written decision issued by the chief clerk, associate deputy comptroller or the general counsel shall be the final administrative action of the comptroller.

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

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DIVISION 4. CONTRACT DISPUTES

34 TAC §§20.556 - 20.558

The Comptroller of Public Accounts proposes new §20.556, concerning assessing and collecting damages and testing costs; §20.557, concerning negotiation and mediation of contract disputes; and §20.558, concerning collection of debts.

The comptroller proposes to rename Chapter 20 Statewide Procurement and Support Services and rename Subchapter F Contract Management. New §§20.556 - 20.558 will be part of Subchapter F, under new Division 4, Contract Disputes.

New §20.556 incorporates former §20.76 in the reorganization of Chapter 20 and revises it to refer to the division instead of the central procurement division or vendor relation program.

New §20.557 incorporates former §20.385 in the reorganization of Chapter 20 and revises it to refer to the comptroller instead of Texas Procurement and Support Services.

New §20.558 incorporates former §20.230 in the reorganization of Chapter 20 and revises it to update external document references.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rules will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the comptroller's procedures for statewide procurement and support services. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the proposals may be submitted to Amy Comeaux, Statewide Procurement Division, at amy.comeaux@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposals in the *Texas Register.*

The new sections are proposed under Government Code, §§2155.0012, 2156.0012, 2251.003, and Local Government Code, §271.082.

The following statutes are affected by the new sections: Government Code, §§481.1855, 2101.035, 2101.041, 2155.069, 2155.070, 2155.075, 2155.0755, 2155.076, 2155.077, 2155.088, 2155.089, 2155.324, 2155.325, 2155.381, 2155.382, 2251.001, 2251.021, 2251.022, 2251.023, 2251.024, 2251.025, 2251.026, 2251.042, 2261.257, 2262.055, 2262.253, and Local Government Code, §271.082.

§20.556. Assessing and Collecting Damages and Testing Costs.

(a) The comptroller's statewide procurement division shall assess all damages and shall collect damages and recover testing costs on behalf of the using qualified ordering entity.

(b) Failure on the part of the supplier to pay an assessed damage or testing cost may be cause for suspension from the state bid list.

(c) If the director identifies repeated complaints on any vendor, that vendor may be removed by the director from the comptroller's bid lists through the debarment process as set forth in Subchapter G of this chapter.

§20.557. Negotiation and Mediation of Contract Disputes.

The negotiation and mediation of breach of contract claims asserted by contractors against the comptroller shall be governed by Chapter

1, Subchapter F of this title (Negotiation and Mediation of Contract Disputes).

§20.558. Collection of Debts.

(a) The comptroller adopts by reference the rule of the Office of the Attorney General, Title 1, Part 3, Texas Administrative Code relating to Collections. The Office of the Attorney General rules are located at the Office of the Secretary of State's web site.

(b) The rules set forth a process for collection of delinquent obligations owed to the comptroller in accordance with Government Code, Chapter 2107, §2107.002.

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

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Don Neal
Chief Deputy General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: December 4, 2016
For further information, please call: (512) 475-0387

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SUBCHAPTER G. DEBARMENT

34 TAC §§20.581 - 20.587

The Comptroller of Public Accounts proposes new sections §20.581, concerning purpose and applicability; §20.582, concerning definitions; §20.583, concerning protecting the state's interest: failure to meet specifications; §20.584, concerning protecting the state's interest: failure to meet contract requirements; §20.585, concerning debarment; §20.586, concerning procedures for investigations and debarment; and §20.587, concerning request for review.

The comptroller proposes to rename Chapter 20 Statewide Procurement and Support Services and rename Subchapter G Debarment. New §§20.581 - 20.587 will be Subchapter G.

New §20.581 incorporates former §20.101 in the reorganization of Chapter 20, and revises it to refer to the comptroller instead of the commission.

New §20.582 incorporates former §20.102 in the reorganization of Chapter 20, and revises it to define only terms used exclusively in Subchapter G.

New §20.583 incorporates former §20.103 in the reorganization of Chapter 20, updates cross-references, and revises it to refer to the contractor instead of the vendor, and to refer to the comptroller instead of the commission.

New §20.584 incorporates former §20.104 in the reorganization of Chapter 20, and revises it to refer to the contractor instead of the vendor, and to refer to the comptroller instead of the commission.

New §20.585 incorporates former §20.105 in the reorganization of Chapter 20, and revises it to refer to the contractor instead of the vendor, and to refer to the director instead of the commission or TBPC.

New §20.586 incorporates former §20.106 in the reorganization of Chapter 20, and revises it to refer to the contractor instead of the vendor, and to refer to the director instead of the commission or TBPC.

New §20.587 incorporates former §20.107 in the reorganization of Chapter 20, and revises it to refer to the contractor instead of the vendor, to refer to the Associate Deputy Comptroller of the comptroller instead of the Executive Director, and to refer to the comptroller or division instead of the commission or TBPC, as appropriate, and to restate the requirement to provide a written decision.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rules will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the comptroller's procedures for statewide procurement and support services. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the proposals may be submitted to Amy Comeaux, Statewide Procurement Division, at amy.comeaux@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposals in the *Texas Register.*

The new sections are proposed under Government Code, §§2155.0012, 2155.077, 2156.0012, and 2157.0012.

The following statutes are affected by the new sections: Government Code, Title 10, Subtitle D, Chapters 2155, 2156, and 2157; and Government Code, §2155.077.

§20.581. Purpose and Applicability.

(a) The purpose of this subchapter is to protect the interests of the state and to ensure public confidence in the integrity of the state's procurement laws, policies and practices. Debarment is a discretionary action and shall be undertaken only for the reasons in, and under the procedures of, this subchapter.

(b) This subchapter applies to all contractors who sell goods and services to the state through any purchasing method authorized by Government Code, Title 10, Subtitle D, Chapters 2155 - 2177. This subchapter applies to vendors and contractors who sell goods or services to a governmental entity whether that entity has been delegated authority by the comptroller or is exempt from the comptroller's procurement rules and procedures.

§20.582. Definitions.

In this division, bidders lists means the centralized master bidders list maintained by the comptroller and all other state bidders lists.

§20.583. Protecting the State's Interest: Failure to Meet Specifications.

(a) When a contractor's goods or services fail to meet contract specifications, the comptroller shall consider:

(1) the degree and nature of the variation between the contract specifications and the specifications of the goods or services actually delivered or offered for delivery;

(2) whether the variation creates a hazard to life, health, safety, welfare or property;

(3) whether the contractor knew of the variation when the bid was submitted or when the goods were delivered;

(4) whether the failure to meet specifications adversely impacts the use of other goods or services;

(5) the ability of the contractor to provide the goods or services that do comply with the required specifications;

(6) the amount of economic loss to the state; economic loss includes, but is not limited to, costs arising from delay, training of employees, lost productivity, procuring substitute goods or services and any other cost, direct or indirect, arising out of the failure to meet specifications; and

(7) any other factors the comptroller determines are relevant to ensure protection of the state's interest; the comptroller shall specify such other factors in a finding made pursuant to §20.586 of this title (relating to Procedures for Investigations and Debarment).

(b) In addition to the comptroller, any state agency, including an institution of higher education, may determine that goods and services fail to meet specifications. Where that determination is made by an entity other than the comptroller, the comptroller is authorized to act against the contractor without further testing and inspection of the goods and services.

§20.584. Protecting the State's Interest: Failure to Meet Contract Requirements.

(a) When a contractor's goods or services fail to meet contract requirements, the comptroller shall consider whether the failure was:

(1) a complete failure to deliver the goods and services or failure to deliver:

(A) in the time period specified in the contract;

(B) to the location specified in the contract; and

(C) in the manner specified in the contract:

(2) a failure to deliver goods:

(A) in the specified quantity;

(B) with the specified invoices or other necessary documentation;

(C) in specified packaging;

(D) in good and usable condition;

(E) without unauthorized substitutions; and

(F) with specified installation including specified repair and replacement parts:

(3) a failure to deliver services:

(A) within the time period specified in the contract;

(B) in the manner or at the level specified in the contract considering:

(i) unsuitability of the final product for the purpose intended;

(ii) lack of integration into or compatibility with other pre-existing systems or processes;

(iii) repeated failure of the final product to reliably operate;

(iv) repeated cost overruns due to circumstances within the control of the vendor;

(v) failure to adhere to contract schedules or ensure timely completion;

(vi) failure to provide specified employee training;

(vii) failure to provide specified reports;

(viii) misrepresentation of qualifications of assigned personnel; and

(ix) any other failure to perform that materially affects the quantity or quality of the service:

(C) in conformance with:

(i) professional standards of care and codes of conduct;

(ii) generally accepted principles of the business or profession; and

(iii) laws and regulations governing the service, including any proper and necessary licenses, permits, certifications, or other approvals required for the vendor to lawfully perform the services.

(b) The comptroller also may evaluate the contractor's performance by considering whether the contractor:

(1) provided accurate and timely invoices;

(2) provided and maintained proof of insurance, bonds, guarantees, letters of credit or other required documents;

(3) provided timely notice of unanticipated factors that may cause delay;

(4) responded appropriately to emergencies;

(5) maintained sufficient financial responsibility; and

(6) any other factors the comptroller determines are relevant to ensure protection of the state's interest; the comptroller shall specify such other factors in a finding made pursuant to this subchapter.

§20.585. Debarment.

(a) Director actions. Under this subchapter, the director may, in order to protect the interests of the state:

(1) conduct an investigation upon a complaint regarding a contractor's acts and omissions in procurement or performance of that contract where the complaint may constitute cause for debarment;

(2) cancel one or more of the contractor's active or pending contracts upon a complaint regarding the contractor's acts and omissions in procurement or performance of that contract where the complaint may constitute cause for debarment;

(3) assess actual damages and costs incurred due to contractor's failure to perform as specified in the contract;

(4) debar a contractor for a specified period of time; and

(5) take any other action authorized by law.

(b) Any action under subsection (a) of this section shall occur upon notice as required under this subchapter. The director may, in its sole discretion, find that more than one of the actions in subsection (a) of this section is appropriate and necessary to protect the state's interests.

(c) Damages for failure to perform. The director may assess actual damages and costs incurred by the state when a contractor fails to perform as specified under a contract. The damages and costs may be assessed whether or not the contractor received notice of investigation or debarment under this subchapter. The director shall consider a failure to pay assessed damages in determining whether to debar a contractor under this subchapter.

(d) The director may debar a contractor for a period of no more than five years upon a finding that:

(1) continued acceptance of goods or services or contractor performance under the contract may constitute a hazard to health, safety, welfare or property;

(2) the contractor committed fraud in the procurement or performance of the contract, including submission of falsified documents by the contractor or any person under the direction or control of the contractor;

(3) there was financial participation by a person who received compensation from the governmental entity to participate in preparing the specifications or request for proposals on which the contract is based or there was any other violation of state ethics laws;

(4) the contractor has been debarred by another state or by the federal government;

(5) the contractor has been convicted of a crime related to fraud in the procurement or performance of any governmental contract including, but not limited to, a conviction for violation of antitrust, collusion, conspiracy, larceny, theft of services, bribery, coercion laws or any other criminal act based on an intent to defraud any governmental entity in the provision of goods or services; and

(6) the contractor has publicly indicated an unwillingness to honor a bid award.

(e) The director may debar a vendor for a period of no more than five years upon a finding that the contractor's performance was substandard. The comptroller shall consider:

(1) the accumulated scoring measured by the Vendor Performance Tracking System and:

(A) the number and severity of the contractor's performance failures in relation to the volume of goods and services provided;

(B) the effectiveness of remedial measures taken by the contractor; and

(C) the age and relevance of past performance information:

(2) the contractor's breach of contract where the breach results in:

(A) significant economic loss to the state; significant economic loss includes, but is not limited to, costs of delay, procurement from a different vendor, costs of initial procurement, contract administration and any other cost, direct or indirect, arising from or attributable to the breach;

(B) a hazard to health, safety, welfare or property; or

(C) damage to the state's reputation for integrity in procurement or honest, efficient administration.

(f) The director may debar a vendor for a period of no more than five years upon a finding that the contractor's performance has resulted in repeated unfavorable performance reviews under Government Code, §2155.089, or repeated unfavorable classifications received by the vendor under Government Code, §2262.055, after considering the following factors:

(1) the severity of the substandard performance by the vendor;

(2) the impact to the state of the substandard performance;

(3) any recommendations by a contracting state agency that provides an unfavorable performance review; and

(4) whether debarment of the vendor is in the best interest of the state.

(g) The director may bar a vendor from participating in state contracts that are subject to Chapter 2155, including contracts for which purchasing authority is delegated to a state agency, if more than two contracts between the vendor and the state have been terminated by the state for unsatisfactory vendor performance during the preceding three years.

(h) Failure to meet specifications: general. The director shall remove a vendor's name from all bidders lists and prohibit the contractor from responding to solicitations on and receiving any contracts from the state when the contractor's goods or services fail to meet specifications. The period of removal shall be less than one year. The period of time for removal shall be determined by evaluating the factors listed in §20.583 of this title (relating to Protecting the State's Interest: Failure to Meet Specifications).

(i) Failure to meet specifications: repeated complaints. If after the period of removal determined under subsection (h) of this section, the director determines that the same contractor or a successor in interest to the contractor has again responded to a contract with goods or services that do not meet specifications, the director shall remove the contractor's name and the contractor's goods and services from all bidders lists for a period of one year.

(j) Failure to meet specifications: debarment. If after the expiration of the one year removal under subsection (h) of this section, the director determines that the same contractor or a successor in interest to the contractor has again responded to a contract with goods or services that do not meet specifications, the director shall debar the vendor for a period of no more than five years.

§20.586. Procedures for Investigations and Debarment.

(a) Method and content of notice. The director shall notify the contractor by the most expeditious method available, including but not limited to telephone, e-mail, and fax, of an action under this subchapter. In addition to the most expeditious method, the director shall also notify the contractor in writing, via certified mail, return receipt requested. The notice shall be in terms sufficient to apprise the contractor of the conduct or transactions upon which it is based. The director shall notify a contractor when:

(1) a contractor is being investigated for potential debarment;

(2) a contractor's contracts have been cancelled; or

(3) a contractor will be disbarred.

(b) Investigation. The director shall investigate a complaint that a contractor has failed to perform under the contract for any of the reasons in this subchapter.

(1) The director shall complete its investigation within 120 days of the receipt of the complaint. The director may, upon receipt of a complaint, cancel the contractor's contracts or cease payments under the contractor's contracts during the period the vendor is under investigation.

(2) Participation of receiving state agency. The director, in conjunction with the receiving agency, shall decide whether to cancel the contractor's contracts by considering:

(A) the effects of a work stoppage on the state agency;

(B) the seriousness of the breach of contract;

(C) any hazard to health, safety, welfare or property; and

(D) any other reason the director and the state agency determine is relevant to the particular circumstances.

(c) Contractor response. A contractor shall submit a written response to the director within ten (10) days of receipt of the notice received under subsection (a) of this section. The contractor is presumed to have received the notice upon the director's receipt of fax confirmation or receipt returned by U.S. mail, whichever period is shorter. The director may, for good cause shown, allow the contractor one ten (10) day extension of time to provide the contractor's response.

(d) Contents of contractor response. The contractor shall respond to each reason the director cites in the notice and shall include all facts the contractor believes are relevant, including any applicable mitigating circumstances and remedial measures.

(e) Director finding. Upon completion of its investigation or upon receipt of the contractor's response, the director shall determine whether the contractor should be debarred. The director shall consider the seriousness of the contractor's acts or omissions and any mitigating factors or remedial measures. The director shall inform the contractor of its finding within ninety (90) days of the original notice provided in subsection (a) of this section. If the director is conducting an investigation under subsection (b) of this section, then the time periods in this subsection are extended by the length of the investigation.

(f) Mitigating circumstances. The director shall consider whether the contractor's failure to perform was caused, in whole or in part, by:

(1) an act of God or force majeure; the director shall review whether the contractor provided the director with timely notification of the event and the reasonableness of the duration of the contractor's failure to perform after the event;

(2) mutual mistake;

(3) legal impossibility; or

(4) significant economic disruption affecting a particular industry.

(g) Remedial measures. The director may consider whether the contractor:

(1) immediately identified and remedied the cause of the failure to perform;

(2) brought the offending conduct to the attention of the comptroller and fully investigated the circumstances surrounding that conduct;

(3) cooperated fully in the director's investigation;

(4) recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment; and

(5) any other remedial measures, including implementation of control procedures, ethics training, or other disciplinary actions against responsible individuals, that the contractor has instituted.

§20.587. Request for Review.

(a) The contractor may request a review of the director's finding. To obtain a review, the contractor shall submit a written request for that review within ten (10) days of receipt of the director's finding. Upon timely written request from the affected contractor, a finding that a contractor should be debarred may be reviewed by the Associate Deputy Comptroller responsible for the comptroller's statewide procurement division, or other executive in the comptroller's office designated by the comptroller.

(b) The Associate Deputy Comptroller performing the review pursuant to contractor request may reinstate the contractor to the bidders list; reduce the period of debarment; affirm the finding of the director; or reinstate the contractor to a particular contract. The Associate Deputy Comptroller performing the review may take one or more of the actions listed herein and shall specify the results of the decision in writing.

(c) The Associate Deputy Comptroller performing the review shall issue the decision on the request for review within sixty (60) days of the receipt of the contractor' request for review.

(d) No person who has an interest in the outcome of the reviewing Associate Deputy Comptroller's review may communicate directly or indirectly upon the merits of an investigation or debarment with any division employees prior to the Associate Deputy Comptroller's decision unless that Associate Deputy Comptroller specifically authorizes such communication.

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

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.6

The Texas Board of Criminal Justice proposes amendments to §151.6, concerning the Petition for the Adoption of a Rule. The amendments are proposed in conjunction with a proposed rule review of §151.6 as published in other sections of the *Texas Register.* The proposed amendments are necessary to conform the language of the rule to state statute and update formatting.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to ensure compliance with state law.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §492.013, §492.016, §2001.021, and Chapter 2008.

Cross Reference to Statutes: None.

§151.6. Petition for the Adoption of a Rule.

(a) Policy. It is the policy of the Texas Board of Criminal Justice (TBCJ [~~or Board~~]) to encourage public input in the TBCJ [~~Board's~~] rulemaking process.

(b) Submission of the Petition.

(1) Any person may petition a state agency to adopt a rule as defined by the *Texas Administrative Procedure Act,* Chapter 2001 of the Texas Government Code.

(2) A petition for a rule under Title 37 of the Texas Administrative Code shall be mailed to the general counsel [~~General Counsel~~] of the Texas Department of Criminal Justice (TDCJ [~~or Agency~~]) at P.O. Box 4004, Huntsville, Texas 77342 [~~13084, Austin, Texas 78711~~].

(3) The petition shall be in writing, [~~shall~~] contain the petitioner's name and address, and [~~shall~~] describe the rule and the reason for making such petition. If the general counsel [~~General Counsel~~] determines that further information is necessary [~~to assist the Agency in reaching a decision~~], the general counsel [~~General Counsel~~] may require that the petitioner resubmit the petition and that it contain:

(A) A brief explanation of the proposed rule;

(B) The text of the proposed rule indicating [~~prepared in a manner to indicate~~] the words to be added or deleted from the current text, if any;

(C) A statement of the statutory or other authority under which the rule is to be promulgated;

(D) Whether there will be an economic impact on persons or on small or microbusinesses required to comply with the proposed rule;

(E) If an adverse economic impact of the proposed rule on small or microbusinesses is identified, the petition shall also contain:

(i) [~~(E)~~] An economic impact statement which estimates the number of small businesses subject to the proposed rule, projects the economic impact of the rule on small businesses, and describes alternative methods of achieving the purpose of the proposed rule; and

(ii) [~~(F)~~] A regulatory flexibility analysis as defined in Texas Government Code [~~,~~] §2006.002; and

(F) [~~(G)~~] The public benefit anticipated as a result of adopting the rule or the anticipated injury or inequity that could result from the failure to adopt the proposed rule.

(4) In addition to the petition, the person may submit a proposal for the adoption of the proposed rule through negotiated rulemaking. The proposal shall identify the potential participants for the negotiated rulemaking committee, possible third party facilitators, and a timeline for the process.

(c) Consideration and Disposition of the Petition.

(1) Except as provided in subsection (d) of this rule, the chairman [~~Chairman~~], in consultation with the general counsel [~~General Counsel~~], shall consider and reject or approve [~~dispose of all~~] petitions submitted.

(2) Within 60 days after receipt of the petition by the general counsel [~~General Counsel~~], or within 60 days after receipt by the general counsel [~~General Counsel~~] of a resubmitted petition in accordance with subsection (b)(3) of this rule, the chairman [~~Chairman~~], in consultation with the general counsel [~~General Counsel~~], shall deny the petition or institute rulemaking procedures in accordance with established TDCJ [~~Agency~~] procedures and the *Texas Administrative Procedure Act.* The chairman [~~Chairman~~], in consultation with the general counsel [~~General Counsel~~], may deny parts of the petition or institute rulemaking procedures on parts of the petition.

(3) The TBCJ [~~Board~~] may initiate a negotiated rulemaking process pursuant to Texas Government Code, Chapter 2008, upon the filing of a petition to initiate the rulemaking proceeding under subsection (b) of this rule.

(4) If the chairman [~~Chairman~~], in consultation with the general counsel [~~General Counsel~~], denies the petition, the general counsel [~~General Counsel~~] shall give the petitioner written notice of the [~~Agency's~~] denial and the reasons for the denial.

(d) Subsequent Petitions to Adopt the Same or Similar Rule. The general counsel [~~General Counsel~~] may refuse to consider any subsequent petition for the adoption of the same or similar rule submitted within six [~~(6)~~] months after the date of the initial petition.

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

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Sharon Howell
General Counsel
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CHAPTER 155. REPORTS AND INFORMATION GATHERING

SUBCHAPTER B. SITE SELECTION AND FACILITY NAMES

37 TAC §155.21

The Texas Board of Criminal Justice proposes amendments to §155.21, concerning Naming of a Texas Department of Criminal Justice Owned Facility. The amendments are proposed in conjunction with a proposed rule review of §155.21 as published in other sections of the *Texas Register.* The proposed amendments are necessary to update formatting.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to update the existing rule.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §492.013.

Cross Reference to Statutes: None.

§155.21. Naming of a Texas Department of Criminal Justice Owned Facility.

(a) Purpose. The purpose of this rule [~~section~~] is to establish procedures for the naming of a facility owned by the Texas Department of Criminal Justice (TDCJ [~~or Agency~~]). These naming procedures do not apply to a facility that is [~~occupied by but~~] not owned by the TDCJ.

(b) Definition. "Facility" is a unit, building, individual room, or portion of a unit or building owned by the TDCJ.

(c) Policy. It is the policy of the Texas Board of Criminal Justice (TBCJ [~~or Board~~]) to name a facility based upon its geographical location, its function, or to recognize an individual who has contributed to the process of criminal justice in the state [~~State~~] of Texas. Suggestions for the naming of a facility may be submitted by the public. However, the TBCJ [~~Board~~] specifically reserves the right to accept, refuse, or choose a name other than those names submitted by the public for consideration.

(d) Procedures.

(1) Suggestions for the naming of a facility owned by the TDCJ shall be submitted to the TBCJ [~~Board~~] office at P.O. Box 13084, Austin, Texas 78711. To be considered, each submitted suggestion shall include the following:

(A) Location of the facility to be named;

(B) Proposed name for the facility;

(C) Biographical sketch of the person if the proposed name is in recognition of a specific individual;

(D) Synopsis of the reasons, achievements, incidents, and other justification that form the basis for the recommendation; and

(E) If the suggested name is in recognition of a specific individual, written approval from the individual or, if the individual is deceased, the individual's next-of-kin.

(2) Suggestions shall be reviewed by the TBCJ chairman [~~Board Chairman~~] and then maintained at the TBCJ [~~Board~~] office for future consideration.

(3) Upon approval of the TBCJ chairman [~~Board Chairman~~], the recommendation to name a facility shall be placed on a TBCJ [~~Board~~] meeting agenda. The TBCJ [~~Board's~~] discussion and consideration concerning the facility's name shall occur in an open meeting. A facility's name shall be approved by a majority vote of the TBCJ [~~Board~~].

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

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CHAPTER 161. COMMUNITY JUSTICE ASSISTANCE DIVISION ADMINISTRATION

37 TAC §161.21

The Texas Board of Criminal Justice proposes amendments to §161.21, concerning the Role of the Judicial Advisory Council. The amendments are proposed in conjunction with a proposed rule review of §161.21 as published in other sections of the *Texas Register.* The proposed amendments are necessary to update formatting.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to update the existing rule.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §492.006, §492.013, §493.003(b), §2110.005.

Cross Reference to Statutes: None.

§161.21. Role of the Judicial Advisory Council.

(a) Policy. The Texas Board of Criminal Justice (TBCJ [~~or Board~~]) acknowledges the judiciary's statutory responsibility and the valuable and critical role of the judiciary in the growth, development, and implementation of community corrections policies and programs in Texas. The Judicial Advisory Council (JAC) is intended to provide a structure for fulfilling that role.

(b) State-level Role of the JAC. In accordance with Texas Government Code [~~,~~] §493.003(b), the function of the JAC is to advise the TBCJ [~~Board~~] and the Texas Department of Criminal Justice Community Justice Assistance Division (TDCJ CJAD) [~~Texas De-~~

~~partment of Criminal Justice-Community Justice Assistance Division (TDCJ-CJAD)~~] director on matters of interest to the judiciary. To accomplish this purpose, the JAC shall:

(1) Act as an information exchange and provide expert advice to the TBCJ [~~Board~~] and the TDCJ CJAD [~~TDCJ-CJAD~~] director;

(2) Be given an opportunity to report to the TBCJ [~~Board~~] at each regularly scheduled meeting on matters of interest to the judiciary, including any item related to the operation of the community justice system, as determined by the JAC chairman [~~Chairman~~] to require the TBCJ's [~~Board's~~] consideration; and

(3) Conduct a review of requests for funding of community corrections programs and projects received by the TDCJ CJAD [~~TDCJ-CJAD~~], and make recommendations to the TDCJ CJAD [~~TDCJ-CJAD~~] director on the funding of reviewed requests, subject to review, ratification, and final approval by the TBCJ [~~Board~~], if such approval is required by TBCJ [~~Board~~] policy.

(c) Local-level Role of the JAC. In addition to the duties set out in subsection (b) of this rule, the JAC shall:

(1) Inform and educate, in an appropriate manner, the constituencies that its members represent regarding issues and procedures that affect the corrections system of Texas;

(2) Coordinate its activities with the community justice liaison member of the TBCJ [~~Board~~], the TDCJ CJAD [~~TDCJ-CJAD~~] director, the local community supervision and corrections departments (CSCDs), and any other significant entities identified by the TDCJ CJAD [~~TDCJ-CJAD~~] director or the executive director [~~Executive Director~~] of the TDCJ; and

(3) Provide a forum for exchange of information and a dialogue with the network of local CSCDs on matters involving community corrections programs.

(d) Additional Authority of the JAC. The JAC chairman [~~Chairman~~] may appoint committees of council members or advisory groups of non-JAC members to achieve the purposes of this rule. The JAC chairman [~~Chairman~~] shall consult with the TDCJ CJAD [~~TDCJ-CJAD~~] director regarding the scheduling of meetings of the JAC, committees of the JAC, or advisory groups to the JAC, to ensure arrangements can be made and sufficient funds exist to allow reimbursement of expenses for attendance, where authorized by law.

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

Filed with the Office of the Secretary of State on October 19, 2016.

TRD-201605448
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: December 4, 2016
For further information, please call: (936) 437-6700

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CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

37 TAC §163.5

The Texas Board of Criminal Justice proposes amendments to §163.5, concerning Waiver to Standards. The amendments are proposed in conjunction with a proposed rule review of §163.5 as published in other sections of the *Texas Register.* The proposed amendments are necessary to update formatting.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to update the existing rule.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §492.013, §509.003.

Cross Reference to Statutes: None.

§163.5. Waiver to Standards.

A Community Supervision and Corrections Department (CSCD) or other state-aid recipient may request a waiver to a standard or standards from the Texas Department of Criminal Justice Community [~~Justice-Community~~] Justice Assistance Division (TDCJ CJAD) [~~(TDCJ-CJAD)~~] director. The TDCJ CJAD [~~TDCJ-CJAD~~] director may grant a waiver upon receipt, examination, and approval of the waiver request. The request for waiver shall include a plan to comply with the standard or standards by a certain date and an explanation why the CSCD is not currently in compliance with the standard or standards. When a determination is [~~has been~~] made that the CSCD is not in compliance with a standard or standards, the CSCD director shall immediately submit a written request for a waiver of the standard or standards to the TDCJ CJAD [~~TDCJ-CJAD~~] director. If the waiver is approved by the TDCJ CJAD [~~TDCJ-CJAD~~] director, the waiver shall become part of the audit record for compliance with that standard or standards.

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

Filed with the Office of the Secretary of State on October 19, 2016.

TRD-201605450
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: December 4, 2016
For further information, please call: (936) 437-6700

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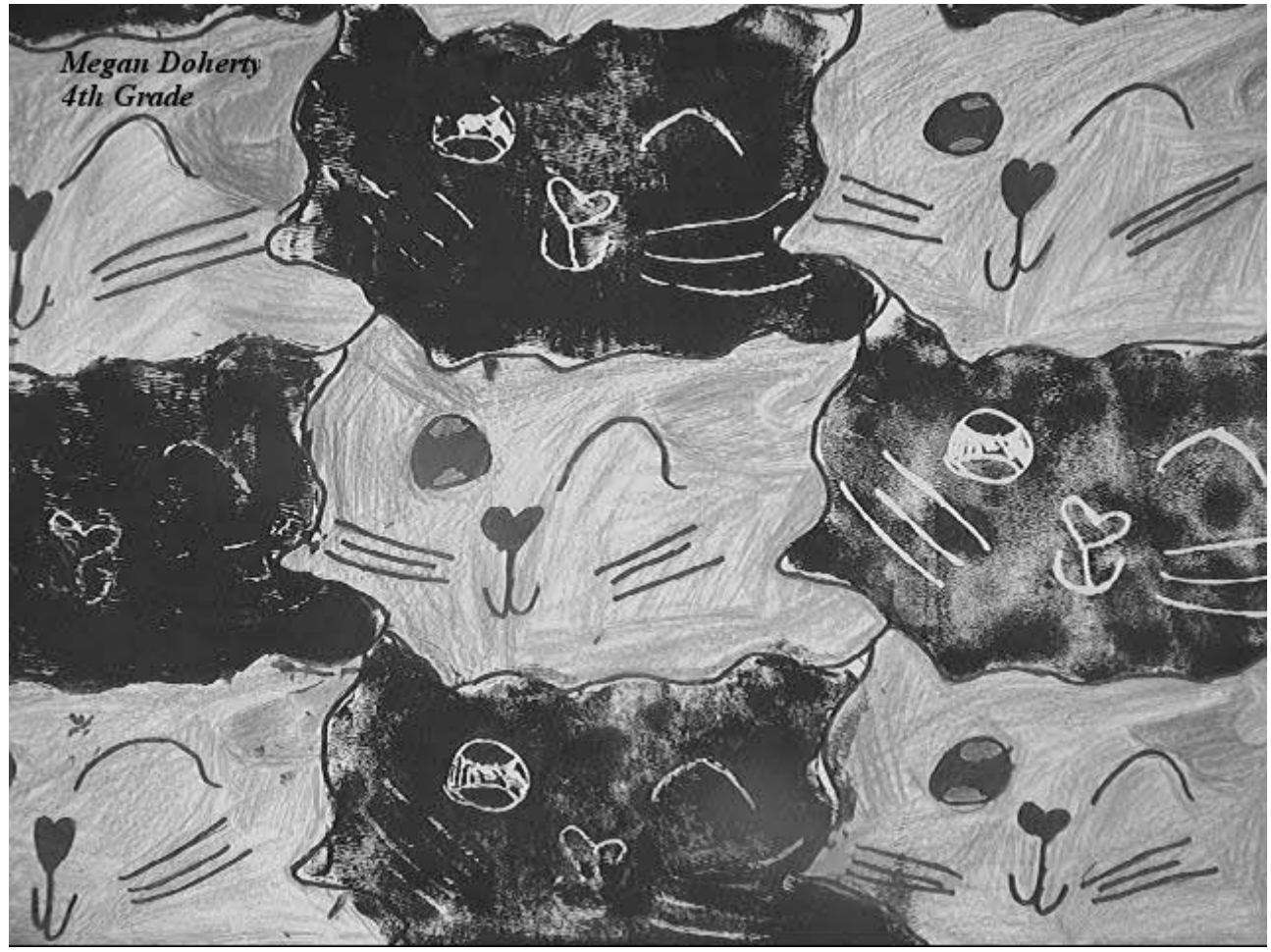
Megan Doherty
4th Grade

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 26. POLITICAL AND LEGISLATIVE ADVERTISING

1 TAC §26.1

The Texas Ethics Commission (the commission) withdraws the proposed amendment to Texas Ethics Commission Rules §26.1, which appeared in the September 2, 2016, issue of the *Texas Register* (41 TexReg 6587).

Effective immediately on filing.

Filed with the Office of the Secretary of State on October 18, 2016.

TRD-201605428
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Effective Date: October 18, 2016
For further information, please call: (512) 463-5800

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Morgan Marks - Third Grade

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 1. OFFICE OF THE GOVERNOR

CHAPTER 5. GENERAL ADMINISTRATION

SUBCHAPTER B. ADMINISTRATIVE POLICIES

1 TAC §5.101

The Office of the Governor (OOG) adopts new 1 TAC §5.101, relating to identifying and escalating procurement contracts that require enhanced contract or performance monitoring. The rule is adopted without changes to the proposed text as published in the September 16, 2016, issue of the *Texas Register* (41 TexReg 7233), and will not be republished.

Reasoned Justification

The rule is adopted to implement changes made in the law regarding state contracting requirements by §2261.253(c), Texas Government Code.

Public Comments

No comments were received regarding the proposed adoption.

Statutory Authority

The new section is adopted in accordance with Government Code, §2261.253(c), which requires the OOG to establish a procedure to identify each procurement contract that requires enhanced contract or performance monitoring.

Cross Reference to Statute

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 21, 2016.

TRD-201605491
Diane Morris
Deputy General Counsel
Office of the Governor
Effective date: November 10, 2016
Proposal publication date: September 16, 2016
For further information, please call: (512) 463-1955

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PART 2. TEXAS ETHICS COMMISSION

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER B. GENERAL REPORTING RULES

1 TAC §20.60

The Texas Ethics Commission (the commission) adopts new Texas Ethics Commission Rules §20.60 without changes to the proposed text as published in the September 2, 2016, issue of the *Texas Register* (41 TexReg 6584). The amendment will not be republished. The section relates to the disclosure of multiple expenditures to a single payee for fees to process political contributions.

Section 254.031(a)(3) of the Election Code requires a campaign finance report to include the amount of political expenditures that in the aggregate exceed $100 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. Expenditures made from personal funds must also be itemized if reimbursement from political contributions is sought. Some filers are required to itemize their expenditures to banks and other merchants to process political contributions, which can include numerous small expenditures to the same payee. The new rule simplifies the filing requirements without any substantive loss in disclosure by permitting a filer to disclose multiple expenditures for such processing fees made to the same payee within a reporting period as a single expenditure. The total amount of the expenditures must be disclosed along with the payee information and purpose, including the dates of the first and last expenditures.

One public comment was received on this rule from Ms. Kenna Giffin; the comment was generally in favor of the rule.

New rule §20.60 is adopted under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

New rule §20.60 affects Election Code §254.031.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 18, 2016.

TRD-201605426

Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Effective date: November 7, 2016
Proposal publication date: September 2, 2016
For further information, please call: (512) 463-5800

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TITLE 7. BANKING AND SECURITIES

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 25. PREPAID FUNERAL CONTRACTS

SUBCHAPTER A. CONTRACT FORMS

7 TAC §§25.1 - 25.6

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §§25.1 - 25.6, concerning prepaid funeral contracts. The amendments are adopted without changes to the proposed text as published in the September 2, 2016, issue of the *Texas Register* (41 TexReg 6587). The amended rules will not be republished.

Current §§25.1 - 25.6 provide the requirements for a licensed seller of prepaid funeral benefits to use and deliver a contract when engaging with a purchaser of benefits, whether via a model or non-model contract. These sections prescribe the substance, form, and approval process for the use of a contract that differs from the model contract issued by the department. Additionally, §25.6 sets out how and when an executed copy of a contract must be delivered to a purchaser. Because §§25.1 - 25.6 were drafted before the prevalence of electronic documents, it is not currently clear that a licensed seller of prepaid funeral benefits may use an electronic contract or how to have an electronic contract approved by the department. Because of this uncertainty, sellers have approached the department individually for a determination whether the seller's electronic process is acceptable. The adopted amendments provide guidance to the sellers and understanding to the public.

Amended §25.1 states that a contract or a waiver in electronic form is a non-model contract. Being non-model requires an electronic contract to comply with the substance and form requirements within §25.3, the plain language requirements within §25.4, and the approval process within §25.5. As amended, §§25.3, 25.4, and 25.5 clarify their application to contracts in electronic form. However, amended §25.2 includes an exception to this general rule by providing that a PDF version of an approved non-model contract or model contract need not be approved by the department because these PDFs will accurately replicate the contract as previously approved in paper form.

The amendment adding §25.2(f) expressly allows the use of contracts in electronic form for the sale of prepaid funeral benefits if the purchaser has been provided the disclosures required by the federal E-SIGN Act and has consented to the use of electronic documents. Because the disclosures required under E-SIGN primarily address the issues of retention and accessibility of an electronic record, the amendments treat the transaction as not having been conducted electronically when the purchaser is contemporaneously given a completed paper copy of the contract.

The amendments to §25.3 explain the placement of contract provisions in electronic format. The amendment to §25.3(b)(8) requires the statement of guaranteed funeral goods and services selected to be on a single screen or consecutive screens, near the beginning or top of the contract, immediately following required consumer disclosures. The amendment to §25.3(c)(1)(G) requires the statement of non-guaranteed cash advance items in an electronic contract to appear on a single screen immediately following the statement of guaranteed funeral goods and services selected. The amendment to §25.3(c)(2) requires, when the seller has deleted the statement of no-guaranteed cash advance items, that the seller include Figure: 7 TAC §25.3(c)(2)(B) immediately following the statement of guaranteed funeral goods and services selected. The amendment to §25.3(j) requires the placement of required signatures and notices near the bottom of an electronic contract. The amendment to §25.3(k)(2) requires the consumer complaints and inquiries notice to appear immediately preceding the area where a purchaser signs an electronic contract. The amendment to §25.3(l)(1) eliminates the need for page numbers in an electronic contract that does not contain pages. The addition of §25.3(n) requires the consumer disclosures mandated by E-SIGN to be before any other provision and allows them to be on a separate screen.

The amendment to §25.4(a) clarifies that an electronic contract must be displayed in an easily readable font and type size. The amendment to §25.4(b) confirms that electronic documents should substantially comply with plain language writing principles. The amendment to §25.4(f)(2) clarifies that page size requirements do not apply to electronic documents.

The amendment to §25.5(b)(1)(A) requires inclusion of screen shots in an application to approve a non-model electronic contract. The amendment to §25.5(b)(1)(D)(ii) requires that the certification for electronic contracts verifies that it complies with Business and Commerce Code, Chapter 322 (the Texas Uniform Electronic Transactions Act) and E-SIGN. The amendment to §25.5(f) deletes transition language that applied when the rules were amended in 2010 and is no longer applicable.

The amendment to §25.6 adds two new subsections that specify that a paper copy must be given unless an electronic contract was used or if the purchaser requests a paper copy of an electronic copy. It also states that electronic contracts may be sent to the purchaser electronically if the purchaser has consented to that.

The department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Finance Code, §154.051, which provides that the commission may adopt rules necessary and reasonable to matters relating to the enforcement and administration of this chapter, and §154.151, which prescribes requirements for the department and the commission relating to the form of contracts.

Finance Code, §§154.001, 154.131, 154.151 - 154.1511, 154.156, 154.2021, 154.401, 154.406 - 154.410, and 154.415 are affected by the proposed amended sections.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 21, 2016.

TRD-201605477
Catherine Reyer
General Counsel
Texas Department of Banking
Effective date: November 10, 2016
Proposal publication date: September 2, 2016
For further information, please call: (512) 475-1301

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 85. PAWNSHOPS AND CRAFTED PRECIOUS METAL DEALERS

SUBCHAPTER A. RULES OF OPERATION FOR PAWNSHOPS

The Finance Commission of Texas (commission) adopts amendments, new rules, and repeals in 7 TAC, Chapter 85, Subchapter A, concerning Rules of Operation for Pawnshops.

The commission adopts the amendments to §§85.102, 85.104, 85.202, 85.206, 85.208, 85.209, 85.211, 85.305, 85.306, 85.402, 85.405, 85.413, 85.420, 85.423, and 85.702; new §85.205; and the repeal of §§85.205, 85.601, and 85.602 without changes to the proposed text as published in the September 2, 2016, issue of the *Texas Register* (41 TexReg 6593).

The commission adopts new §85.601 with changes to the proposed text as published in the September 2, 2016, issue of the *Texas Register* (41 TexReg 6593). The changes are a result of a technical correction to a citation.

The commission received no written comments on the proposal.

In general, the purpose of the rule changes in 7 TAC, Chapter 85, Subchapter A is to update rules regarding the licensing of pawnshops and to make technical corrections. The adopted rule changes relate to the following issues: contact information, license transfers, criminal history review, disclosures, and recordkeeping. Additionally, certain sections are being repealed in order to replace them with new, reorganized rules.

The agency circulated an early draft of proposed changes to interested stakeholders. The agency then held a stakeholders meeting where attendees provided oral precomments. In addition, the agency received three informal written precomments. Certain concepts recommended by stakeholders were incorporated into the proposal, and the agency appreciates the thoughtful input provided by stakeholders.

The individual purposes of the adopted changes to each section are provided in the following paragraphs.

In §85.102, the adoption adds a definition of "parent entity," specifying that this term refers to a direct owner of a licensee or applicant. This definition is intended to clarify the provisions on mergers and license transfers in §85.205 and §85.208, discussed later in this adoption, and is consistent with other OCCC licensing rules. An amendment to former §85.102(11) (adopted §85.102(12)) amends the definition of "principal party" for sole proprietorships. The amendment removes the statement that proprietors include spouses with a community property interest. This amendment conforms to an amendment to the application requirements for sole proprietorships in §85.202(a)(1)(B)(i), discussed later in this adoption.

Adopted amendments to §85.104(b) and (c) clarify the agency's procedure for providing delinquency notices to licensees that have failed to pay an annual assessment fee. The amendments specify that notice of delinquency is considered to be given when the OCCC sends the notice by e-mail to the address on file with the OCCC (if the pawnshop has provided an e-mail address), or by mail to the address on file with the OCCC as a master file address (if the pawnshop has not provided an e-mail address).

An amendment to §85.202(a)(1)(B)(i) removes the requirement to disclose community property interests and documentation regarding separate property status, and replaces it with a requirement to disclose the names of the spouses of principal parties if requested. The agency currently spends considerable time requesting information from license applicants to determine the status of spouses' property interests, and explaining these concepts to applicants. These amendments will help streamline the licensing process and reduce regulatory burden. The amendments will also make the application process simpler and more straightforward for applicants. In specific cases where the spouse is a principal party, the OCCC would be able to request additional information about the spouse under current §85.202(a)(1)(E)-(F).

Section 85.205 is being repealed and replaced with a new rule, with the intent to clarify the requirements when a licensee transfers ownership. Section 85.205 describes what constitutes a transfer of ownership requiring the filing of a transfer application. The adopted new rule largely maintains the requirements under the former rule, including the requirements for filing a license transfer application. In addition to the license transfer application allowed under the former rule, the new rule allows an alternative method for a transfer of ownership: a new license application on transfer of ownership. The new rule describes what the application must include, the timing requirements, and which parties are responsible at different points in the transfer process. Subsection (a) describes the purpose of the new section. Subsection (b) defines terms used throughout the section. In particular, subsection (b)(3) defines the phrase "transfer of ownership," listing different types of changes in acquisition or control of the licensed entity.

Subsection (c) specifies that a license may not be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §371.070. Subsection (d) provides a timing requirement, stating that a complete license transfer application or new license application on transfer of ownership must be filed no later than 30 days after the transfer of ownership. Subsection (e) outlines the requirements for the license transfer application or new license application on transfer of ownership. These requirements include complete documentation of the transfer of ownership, as well as a complete license application for transferees that do not hold an existing pawnshop license. Subsection (e)(5) explains that the application may include a request for permission to operate.

Subsection (f) provides that the OCCC may issue a permission to operate to the transferee. A permission to operate is a temporary authorization from the OCCC allowing a transferee to operate while final approval is pending for an application. Subsection (g) specifies the transferee's authority to engage in business if the transferee has filed a complete application including a request

for permission to operate. It also requires the transferee to immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. Subsection (h) describes the situations where the transferor is responsible for business activity at the licensed location, situations where the transferee is responsible, and situations where both parties are responsible.

In §85.206, concerning Processing of Application, conforming changes in this adoption cite the amended title of §85.205.

In §85.208, concerning Change in Form or Proportionate Ownership, conforming changes are adopted corresponding to proposed new §85.205. Throughout subsections (b) and (c), references have been added to the new license application on transfer of ownership. In addition, amendments in subsection (b) clarify situations where a merger is a transfer of ownership. The amendments specify that if a licensee is a party to a merger that results in a new or different surviving entity other than the licensee, then the merger is a transfer of ownership, and the licensee must file a license transfer application or new license application. The amendments to subsection (b) are intended to clarify the current rule text and are consistent with the OCCC's current policy.

Adopted amendments to §85.209 clarify the circumstances in which a pawnshop applicant or licensee must notify the OCCC of changes to information in the original license application. The amendments specify that the requirement to provide updated information within 10 days applies before a license application is approved. Adopted new §85.209(c) provides that a licensee must notify the OCCC within 30 days if the information relates to the names of principal parties, criminal history, regulatory actions, or court judgments. Adopted new §85.209(d) specifies that each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC is current and correct, and that it is a best practice for licensees to regularly review contact information. Corresponding changes are adopted in §85.305 for pawnshop employee licensees.

An adopted amendment to §85.211(d) provides that a pawnshop license applicant must pay a fee to a party designated by the Texas Department of Public Safety (DPS) for processing fingerprints. This amendment conforms the rule to the method by which applicants currently provide fingerprint information through DPS's Fingerprint Applicant Services of Texas (FAST) program. A corresponding change is adopted in §85.306 for pawnshop employee licensees. An amendment to former §85.211(g) (adopted §85.211(h)) adds a tagline for clarity.

An adopted amendment to §85.402(g) relates to the requirement for sequential numbering of electronic pawn tickets. The amendment removes the requirement that the OCCC approve methods of numbering the pawn ticket other than sequential numbering by the form supplier. Instead, the amendment provides that the pawnshop may sequentially number each pawn ticket in accordance with written policies that ensure appropriate management and controls. The amendment is intended to provide pawnshops with flexibility in numbering pawn tickets, while also ensuring that pawnshops properly account for all transactions. Another adopted amendment to §85.402(g) specifies that each of the three parts of the pawn ticket must be numbered with the same sequential number.

Adopted new §85.402(h) requires pawnshops to maintain documentation and disclosures required under the Department of Defense's Military Lending Act (MLA) Rule, 32 C.F.R. pt. 232. The Department of Defense's recently adopted amendments to the MLA Rule have a required compliance date of October 3, 2016. Under the amended MLA Rule, creditors will generally be required to provide model disclosures to covered military borrowers. 32 C.F.R. §232.6. The amended MLA Rule also specifies documentation that creditors can obtain in order to determine whether a consumer is a covered military borrower. 32 C.F.R. §232.5. Adopted new §85.402(h) specifies that licensees are required to maintain these documents and disclosures. These records must be maintained for two years from the date of the final entry, like the pawn ticket under current §85.402(b). The two-year requirement is based on Texas Finance Code, §371.152, which requires pawnshops to keep records of pawn transactions for two years from the date of the last recorded event. However, licensees may keep the documents for a longer period of time if they choose.

At the stakeholders meeting, one stakeholder asked whether §85.402(h) would require a particular form for records about whether a consumer is a covered military borrower. The Department of Defense has created a database that lenders can consult to determine whether a consumer is a covered military borrower. Although the MLA Rule provides a safe harbor for lenders who use the database, it provides that a lender may apply its own method to determine whether a consumer is a covered military borrower. 32 C.F.R. §232.5(a). To clarify, adopted §85.402(h) does not require a particular form for records about whether a consumer is a covered military borrower, but requires licensees to retain any records that they obtain to make that determination.

Several stakeholders raised other questions about how to comply with the MLA Rule. For example, stakeholders asked questions about how to calculate the military annual percentage rate for purposes of the MLA Rule's 36% maximum for loans made to covered military borrowers. Stakeholders also asked questions about obtaining a potential borrower's Social Security number in order to determine whether the borrower is a covered military borrower. These questions are generally outside the scope of the adopted rule amendments. However, on September 28, 2016, the agency published an advisory bulletin with guidance on complying with the MLA Rule.

An adopted amendment to §85.405(a)(2) allows licensees to modify the current rule's model pawn ticket, to add the mandatory disclosure to a covered borrower under the MLA Rule, 32 C.F.R. §232.6. One precommenter suggested adding language to the amendment to §85.405(a)(2), to specify that the required disclosure is not required to be on the pawn ticket. In response to this precomment, the amendment explains that a licensee may provide the disclosure on a separate form, as an alternative to including the disclosure on the pawn ticket.

Another precommenter suggested an additional permissible pawn ticket change related to the MLA Rule. The precommenter suggested adding the following sentence to §85.405(a)(2)(B): "A licensee also may modify the pawn ticket to add an inquiry as to whether or not the borrower is a covered borrower." The agency believes that this modification could create confusion. The inquiry might be misunderstood by borrowers and licensees, who could believe that the borrower's statement creates a safe harbor from penalties under the MLA Rule. However, if a licensee creates a specific modification of the pawn ticket, it may submit the non-standard ticket to the OCCC under former §85.405(a)(2)(B) (adopted §85.405(a)(2)(C)), and the OCCC will review the inquiry in the context of the amended pawn ticket.

An adopted amendment to §85.405(a)(6)(A) explains that a handgun license is an acceptable form of identification, as provided by Texas Business and Commerce Code, §506.001(a). Under Section 506.001(a), a person may not deny the holder of a handgun license issued by the Texas Department of Public Safety access to goods, services, or facilities, because the holder presents a handgun license rather than a driver's license or other acceptable form of personal identification. The Texas Legislature enacted this provision in H.B. 2739 (2015). In the same legislative session, the Legislature enacted an open-carry law, H.B. 910 (2015), which replaced statutory references to the phrase "concealed handgun license" with the phrase "handgun license." The amendment to §85.405(a)(6)(A) is intended to clarify that a Texas handgun license is permissible for a borrower in a pawn transaction, in addition to other forms of photographic identification listed in Texas Finance Code, §371.174(b). The amendment conforms to the OCCC's advisory bulletin no. B15-3 for pawnshops, "Handgun License as a Valid Form of ID." At the stakeholders meeting, one stakeholder asked whether this amendment refers only to Texas handgun licenses, or includes handgun licenses from other states. In response to this question, the adopted rule text states that a "Texas handgun license issued under Texas Government Code, Chapter 411" is an acceptable form of identification, in order to clarify that this provision refers only to Texas handgun licenses issued by the Texas Department of Public Safety.

Adopted amendments to §85.413 relate to disclosures for consumer complaints about lost or damaged goods. A new figure is being adopted to replace former figure 7 TAC §85.413(e)(6), which is a disclosure about the complaint process for lost or damaged goods. The new figure removes the former figure's statement that the pawnshop must provide a copy of the OCCC complaint form to the consumer, and replaces it with a statement explaining that the consumer may file a complaint through the OCCC's website. The new figure also includes updated contact information for the OCCC. Corresponding changes are adopted in §85.413(h). Previously, subsection (h) provided that the pawnshop must provide a copy of the OCCC complaint form upon request by a person attempting to redeem pledged goods, and figure 7 TAC §85.413(h) contained a copy of the OCCC's complaint form. The amendments to subsection (h) replace these provisions with a statement that a person attempting to redeem lost or damaged goods may file a written complaint with the OCCC, and a statement that the complaint form is available on the OCCC's website. These amendments are intended to ensure that consumers receive disclosures with up-to-date OCCC contact information, and that consumers are encouraged to file any complaints through the OCCC's website.

An adopted amendment to §85.420(b)(2) clarifies hold-period requirements for purchase transactions by pawnshops. Generally, pawnshops are required to hold purchased items for at least 20 days, under §85.420(b)(1)(A). However, there is an exception to this general requirement in former §85.420(b)(2), which provides that a pawnshop and a law enforcement agency may agree to a hold period of seven days or less if the following conditions are met: (1) information is exchanged electronically, (2) the agreement does not conflict with any local ordinance, and (3) the agreement is submitted to the OCCC in writing. The adopted amendment to §85.420(b)(2) replaces "seven days or less" with "less than 20 days," to clarify that the agreement with the law enforcement agency can be for a period between 7 and 20 days (e.g., a 10-day hold period).

Adopted amendments to §85.423 relate to a notice to consumers about filing complaints with the OCCC. Under §85.423, pawnshops are generally required to include this notice on the privacy notices that they provide to consumers, unless the pawnshop provides the privacy notice at the same time as the pawn ticket, and the pawn ticket includes a shorter OCCC notice with the agency's phone number. An adopted amendment to §85.423(b) amends the longer OCCC notice to include the OCCC's updated website and e-mail address. In accordance with instructions from the Texas Department of Information Resources, the OCCC has updated its website and e-mail address with the "texas.gov" extension: occc.texas.gov and consumer.complaints@occc.texas.gov. Other revisions have been made to the text of the OCCC notice to provide more clarity to consumers regarding the role of the OCCC in resolving complaints. Previously, this notice had been referenced in the rules as the "Complaints and inquiries notice." To continue the use of the agency's acronym and provide consistency with other rules, this consumer notice has been relabeled as the "OCCC Notice."

Adopted new §85.601 specifies the criminal history information collected by the OCCC, outlines factors the OCCC will consider when reviewing criminal history information, and describes grounds for denial, suspension, and revocation of a pawnshop or pawnshop employee license. This section replaces former §85.601 and §85.602, which are being repealed. Subsection (a) describes the OCCC's collection of criminal history record information from law enforcement agencies. Subsection (b) identifies the criminal history information that the applicant must disclose. Subsection (c) describes the OCCC's denial, suspension, and revocation based on crimes that are directly related to the licensed occupation of a pawnbroker or pawnshop employee. Subsection (c)(1) lists the types of crimes that the OCCC considers to directly relate to the duties and responsibilities of being a licensee, including the reasons the crimes relate to the occupation, as provided by Texas Occupations Code, §53.025(a). Subsection (c)(2) contains the factors the OCCC will consider in determining whether a criminal offense directly relates to the duties and responsibilities of a licensee, as provided by Texas Occupations Code, §53.022. Subsection (c)(3) provides the mitigating factors the OCCC will consider to determine whether a conviction renders an applicant or licensee unfit, as provided by Texas Occupations Code, §53.023. Subsection (d) describes the OCCC's authority to deny a license application if it does not find that the applicant is of good moral character, or if the applicant does not have the responsibility, character, and fitness to command the confidence of the public, as provided by Texas Finance Code, §371.052(a) and §371.102(b). Subsection (e) explains that the OCCC will revoke a license on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b). Subsection (f) identifies other grounds for denial, suspension, or revocation, including convictions for specific offenses described by statutory provisions cited in the rule.

Since the proposal, a change has been made to §85.601(f)(2) to remove a reference to a provision in the Texas Code of Criminal Procedure that will be in effect through December 31, 2016. Because the effective date of this adoption is January 1, 2017, a citation to the 2016 version of the provision is unnecessary. As revised in new §85.601, subsection (f)(2) cites the relevant

provisions of the Texas Code of Criminal Procedure that will be effective in 2017.

At the stakeholders meeting, two stakeholders expressed concern about new §85.601's provisions regarding denial of a license application when the applicant provides incomplete or inaccurate information on the application. One stakeholder asked whether providing incomplete or inaccurate information would constitute the criminal offense of "filing a false government report" for purposes of §85.601(c)(1)(F). To clarify, the list of directly related offenses in adopted §85.601(c)(1) refers to criminal offenses for which the applicant has been convicted. Providing incomplete or inaccurate information to the OCCC would not constitute an offense under §85.601(c)(1) unless the applicant is actually convicted of an offense in connection with the application. However, providing incomplete or inaccurate information might be a separate basis for denying the application, as specified in §85.601(f)(4). Another stakeholder asked whether the OCCC would continue its policy of providing applicants an opportunity to respond when the OCCC finds that the license application contains incomplete information regarding criminal history. After an applicant files an application, if the OCCC finds criminal history that relates to the occupation or the applicant's moral character, the agency's policy is to send a letter to the applicant providing an opportunity to explain the criminal history. The OCCC intends to continue this policy. However, applicants still have a responsibility to ensure that applications are complete and accurate at the time of submission, so that the OCCC can review applications in a timely and efficient manner. Submitting an incomplete or inaccurate license application reflects negatively on the applicant's responsibility, character, and fitness to hold a license.

Adopted amendments to §85.702(b) include technical corrections relating to the administrative penalty for violating the acceptance of goods provisions in §85.418(a). One amendment replaces "items" with "item," to clarify that a licensee commits a violation by accepting an item in violation of the acceptance of goods provisions. Another adopted amendment replaces "and" with "or," to clarify that a licensee is subject to a penalty if the licensee violates §85.418(a)(1) or (3).

Regarding the effective date of these rule changes, Texas Finance Code, §371.006 requires notice to licensees concerning rulemaking for the pawnshop industry. In order to comply with this statutory notice requirement, the delayed effective date for all rule changes included in this adoption will be January 1, 2017.

Additionally, the agency has delayed the implementation date for use of the revised forms in §85.413(e)(6) and §85.423, which will help minimize potential costs and allow use of current forms inventory. Licensees may continue use of the prior forms until February 28, 2017. On or after March 1, 2017, licensees must use the revised forms for §85.413(e)(6) and §85.423, as amended by this adoption.

DIVISION 1. GENERAL PROVISIONS

7 TAC §85.102, §85.104

The amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §371.006 grants the Finance Commission the authority to adopt rules to enforce the Texas Pawnshop Act. The amendment to §85.420 is adopted under Texas Finance Code, §371.181(b), which provides that the commission shall adopt rules allowing a pawnshop to assist law enforcement agencies in locating and recovering stolen property. The amendments to §85.423 are adopted under Texas Finance Code, §11.307(b), which provides that the commission shall adopt rules requiring regulated entities to include complaint notices on legally required privacy notices.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 11 and 371.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 21, 2016.

TRD-201605478
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: January 1, 2017
Proposal publication date: September 2, 2016
For further information, please call: (512) 936-7621

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DIVISION 2. PAWNSHOP LICENSE

7 TAC §§85.202, 85.205, 85.206, 85.208, 85.209, 85.211

The new section and amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §371.006 grants the Finance Commission the authority to adopt rules to enforce the Texas Pawnshop Act.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 11 and 371.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Leslie L. Pettijohn
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Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7621

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7 TAC §85.205

The repeal is adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §371.006 grants the Finance Commission the authority to adopt rules to enforce the Texas Pawnshop Act.

The statutory provisions affected by the adopted repeal are contained in Texas Finance Code, Chapters 11 and 371.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201605484
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7621

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DIVISION 3. PAWNSHOP EMPLOYEE LICENSE

7 TAC §85.305, §85.306

The amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §371.006 grants the Finance Commission the authority to adopt rules to enforce the Texas Pawnshop Act.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 11 and 371.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7621

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DIVISION 4. OPERATION OF PAWNSHOPS

7 TAC §§85.402, 85.405, 85.413, 85.420, 85.423

The amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §371.006 grants the Finance Commission the authority to adopt rules to enforce the Texas Pawnshop Act. The amendment to §85.420 is adopted under Texas Finance Code, §371.181(b), which provides that the commission shall adopt rules allowing a pawnshop to assist law enforcement agencies in locating and recovering stolen property. The amendments to §85.423 are adopted under Texas Finance Code, §11.307(b), which provides that the commission shall adopt rules requiring regulated entities to include complaint notices on legally required privacy notices.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 11 and 371.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: January 1, 2017
Proposal publication date: September 2, 2016
For further information, please call: (512) 936-7621

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DIVISION 6. LICENSE REVOCATION, SUSPENSION, AND SURRENDER

7 TAC §85.601, §85.602

The repeals are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §371.006 grants the Finance Commission the authority to adopt rules to enforce the Texas Pawnshop Act.

The statutory provisions affected by the adopted repeals are contained in Texas Finance Code, Chapters 11 and 371.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7621

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7 TAC §85.601

The new section is adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §371.006 grants the Finance Commission the authority to adopt rules to enforce the Texas Pawnshop Act.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 11 and 371.

§85.601. Denial, Suspension, or Revocation Based on Criminal History.

(a) Criminal history record information. After an applicant for a pawnshop license or pawnshop employee license submits a complete license application, including all required fingerprints, and pays the fees required by §85.211 of this title (relating to Fees) or §85.306 of

this title (relating to Fees), the OCCC will investigate the applicant and any principal parties. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprints have been initially processed.

(b) Disclosure of criminal history. The applicant must disclose all criminal history information required to file a complete application with the OCCC. Failure to provide any information required as part of the application or requested by the OCCC reflects negatively on the belief that the business will be operated lawfully and fairly. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions of the applicant and any principal parties;

(2) reliable documents or testimony necessary to make a determination under subsection (c), including letters of recommendation from prosecution, law enforcement, and correctional authorities;

(3) proof that the applicant has maintained a record of steady employment, has supported the applicant's dependents, and has otherwise maintained a record of good conduct; and

(4) proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid or are current.

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a pawnshop license or pawnshop employee license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a licensee under Texas Finance Code, Chapter 371, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Being a pawnbroker or pawnshop employee involves or may involve representations to borrowers and sellers, receiving money from borrowers, collecting due amounts in a legal manner, maintenance of accounts to make loans and replace lost or damaged goods, and compliance with reporting requirements to governmental agencies relating to certain transactions including firearms. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:

(A) theft (including receiving or concealing stolen property);

(B) assault;

(C) any offense that involves misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery);

(D) any offense that involves breach of trust or other fiduciary duty;

(E) any criminal violation of a statute governing credit transactions or debt collection;

(F) failure to file a government report, filing a false government report, or tampering with a government record;

(G) any greater offense that includes an offense described in subparagraphs (A) - (F) of this paragraph as a lesser included offense;

(H) any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (G) of this paragraph.

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensee.

(3) In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a licensee, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.023:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; and

(F) evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation from one or more of the following:

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

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

(iii) other persons in contact with the convicted person.

(d) Crimes related to moral character and fitness.

(1) The OCCC may deny a pawnshop license application if the applicant is not of good moral character, if the applicant does not show that the business will be operated lawfully and fairly, or if the applicant does not show that the applicant or the applicant's owners have the financial responsibility, experience, character, and general fitness to command the confidence of the public, as provided by Texas Finance Code, §371.052(a).

(2) The OCCC may deny a pawnshop employee license if the applicant is not of good moral character and good business repute, or if the applicant does not possess the character and general fitness necessary to warrant the belief that the individual will operate the business lawfully and fairly, as provided by Texas Finance Code, §371.102(b).

(3) In conducting its review of moral character and fitness, the OCCC will consider the criminal history of the applicant and any principal parties. The OCCC considers the offenses described by subsections (c)(1) and (f)(2) of this section to be crimes involving moral character. If the applicant or a principal party has been convicted of

an offense described by subsections (c)(1) or (f)(2) of this section, this reflects negatively on an applicant's moral character. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2) - (3) of this section in its review of moral character and fitness.

(e) Revocation on imprisonment. A license will be revoked on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a license application, or suspend or revoke a license, based on any other ground authorized by statute, including the following:

(1) a conviction for an offense that does not directly relate to the duties and responsibilities of the occupation and that was committed less than five years before the date of application, as provided by Texas Occupations Code, §53.021(a)(2);

(2) a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42A.054 or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(3) - (4);

(3) a conviction of a pawnshop licensee or a principal party for an offense directly related to the licensed occupation, as provided by Texas Finance Code, §371.251(a)(6);

(4) errors or incomplete information in the license application;

(5) a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §371.251(a)(3) and §371.255(2);

(6) a finding by the OCCC that the financial responsibility, experience, character, or general fitness of a pawnshop licensee or a principal party do not command the confidence of the public or warrant the belief that the business will be operated lawfully, fairly, and within the purposes of this chapter, as provided by Texas Finance Code, §371.251(a)(7); and

(7) a finding by the OCCC that the moral character, business repute, and general fitness of a pawnshop employee license holder do not warrant belief that the license holder will operate the business lawfully and fairly, as provided by Texas Finance Code, §371.255(3).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 21, 2016.

TRD-201605482
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: January 1, 2017
Proposal publication date: September 2, 2016
For further information, please call: (512) 936-7621

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DIVISION 7. ENFORCEMENT; PENALTIES

7 TAC §85.702

The amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §371.006 grants the Finance Commission the authority to adopt rules to enforce the Texas Pawnshop Act.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 11 and 371.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7621

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TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 303. GENERAL PROVISIONS

SUBCHAPTER D. TEXAS BRED INCENTIVE PROGRAMS

DIVISION 3. PROGRAMS FOR GREYHOUNDS

16 TAC §303.102

The Texas Racing Commission adopts an amendment to 16 TAC §303.102, Greyhound Rules, without changes to the proposed text as published in the August 26, 2016, issue of the *Texas Register* (41 TexReg 6317) and the amendment will not be republished. The section relates to the procedures governing the Accredited Texas-Bred program for greyhounds.

The adopted amendment addresses the change from year-round live racing to the new seasonal racing model. Under the previous system, Texas-bred funds were accumulated monthly and disbursed to the owners of Texas-bred greyhounds that won races in that month. Under the new model, Texas-bred funds will accumulate for most of the year before there is a

short greyhound meet during which to disburse the funds. The amendments ensure that the accumulated funds are distributed equitably by (1) modifying payouts of owner awards for Texas-bred greyhounds to provide for such awards for the first four Texas-bred greyhounds in each race, instead of only the winner, and (2) distributing Texas-bred funds that accumulate during the intervening months proportionately according to the number of performances proposed for each month of the live meet.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting horse racing and to adopt other rules to administer the Act, and §6.091, which requires the Commission to establish rules for the distribution of Texas-bred program funds.

The amendment implements Texas Revised Civil Statutes Annotated, Article 179e.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 18, 2016.

TRD-201605436
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: November 7, 2016
Proposal publication date: August 26, 2016
For further information, please call: (512) 833-6699

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER AA. COMMISSIONER'S RULES ON SCHOOL FINANCE

19 TAC §61.1020

The Texas Education Agency (TEA) adopts new §61.1020, concerning excess funds for video surveillance of special education settings. The new section is adopted without changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4577) and will not be republished. The adopted new rule is necessary to implement the Texas Education Code (TEC), §42.2528, as added by Senate Bill (SB) 507, 84th Texas Legislature, 2015.

REASONED JUSTIFICATION. SB 507, 84th Texas Legislature, 2015, added the TEC, §29.022, to require school districts and charter schools to provide video surveillance in certain special education settings on request by a parent, trustee, or staff member. SB 507 also added the TEC, §42.2528, to provide for a grant program to assist in covering the cost of video surveillance equipment for use in implementing the TEC, §29.022, if surplus Foundation School Program (FSP) funds are available.

Adopted new 19 TAC §61.1020 implements the TEC, §42.2528, by establishing provisions for a grant program that would be created should FSP funds become available. The new section describes general provisions, eligibility requirements, the application process, the finality of the award based on information available to the TEA as of the deadline for receipt of applications, data sources to be used for tax information and the count of students in weighted average daily attendance, definitions, deadlines, assignment of priority statuses for applicants, and how funds would be distributed.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began June 24, 2016, and ended July 25, 2016. Following is a summary of the public comment received and the corresponding agency response regarding proposed new 19 TAC Chapter 61, School Districts, Subchapter AA, Commissioner's Rules on School Finance, §61.1020, Excess Funds for Video Surveillance of Special Education Settings.

Comment. The Arc of Texas and Disability Rights Texas commented that it would be beneficial for students with disabilities and their parents if the rule included an additional subsection clearly requiring compliance with the commissioner's regulations under SB 507 irrespective of the availability of funds.

Agency Response. The agency disagrees and maintains language as proposed. The TEC, §29.022, is clear that school districts and open-enrollment charter schools shall provide video surveillance of special education settings on the request of a parent regardless of the reimbursement provisions of the TEC, §42.2528.

STATUTORY AUTHORITY. The new section is adopted under the Texas Education Code (TEC), §42.2528, which requires the commissioner by rule to establish a grant program through which excess Foundation School Program funds are awarded as grants for the purchase of video surveillance equipment for compliance with the TEC, §29.022.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §42.2528.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 17, 2016.

TRD-201605420
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: November 6, 2016
Proposal publication date: June 24, 2016
For further information, please call: (512) 475-1497

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 169. ZOONOSIS CONTROL

SUBCHAPTER B. CARE OF ANIMALS BY CIRCUSES, CARNIVALS, AND ZOOS

25 TAC §§169.41 - 169.48

The Executive Commissioner of the Health and Human Services Commission, (commission), on behalf of the Department of State Health Services (department), adopts the repeal of §§169.41 - 169.48, concerning the care of animals by circuses, carnivals, and zoos without changes to the proposed text as published in the July 1, 2016, issue of the *Texas Register* (41 TexReg 4778) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

Texas Occupations Code, Chapter 2152, "Regulation of Circuses, Carnivals, and Zoos," §§2152.051 - 2152.054, provided the Executive Commissioner of the Health and Human Services Commission with the authority to adopt standards for the operation of circuses, carnivals, and zoos, prescribe qualifications for its inspection agents, and prescribe the amount of each fee required by this chapter. Senate Bill (SB) 219, 84th Texas Legislature, Regular Session, 2015, repealed Texas Occupations Code, Chapter 2152. Therefore, §§169.41 - 169.48 are no longer required due to the repeal of the authorizing statute.

SECTION-BY-SECTION SUMMARY

The repeal of §§169.41 - 169.48 is necessary because SB 219 repealed Texas Occupations Code, Chapter 2152, which was the legal mandate for these rules.

COMMENTS

The department, on behalf of the commission, did not receive any public comments during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The repeals are authorized under Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to make decisive actions on rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 24, 2016.

TRD-201605522
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: November 13, 2016
Proposal publication date: July 1, 2016
For further information, please call: (512) 776-6972

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SUBCHAPTER F. REPTILE-ASSOCIATED SALMONELLOSIS

25 TAC §169.121

The Executive Commissioner of the Health and Human Services Commission, (commission), on behalf of the Department of State Health Services (department), adopts an amendment to §169.121, concerning reptile-associated salmonellosis with changes to the proposed text as published in the July 22, 2016, issue of the *Texas Register* (41 TexReg 5325).

BACKGROUND AND PURPOSE

The amendment is necessary to comply with Health and Safety Code, Chapter 81, Subchapter I, "Animal-Borne Diseases," which requires retail pet stores to post signs and distribute warnings relating to reptile-associated salmonellosis to purchasers of reptiles. The signs and warnings are to be in accordance with the form and content designated by the Executive Commissioner.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 169.121 has been reviewed and the department has determined that reasons for adopting the section continue to exist because a rule on this subject is required by statute and provides guidance to retail pet stores.

SECTION-BY-SECTION SUMMARY

The amendment to §169.121 allows for consistency with the Centers for Disease Control and Prevention (CDC) recommendations for preventing transmission of *Salmonella* from reptiles to humans. The amendment clarifies the requirements for retailers to post warning signs and distribute written warnings to inform purchasers that reptiles may carry *Salmonella* bacteria in accordance with Health and Safety Code, Chapter 81. This amendment also allows improved readability and comprehension of required recommendations.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared a response to the comment received regarding the proposed rule during the 30-day comment period, which the commission has reviewed and accepts. The commenter included the Pet Industry Joint Advisory Council (PIJAC). The commenter was not against the rule in its entirety; however, the commenter suggested recommendations for change as discussed in the summary of comments.

COMMENT: The PIJAC made a request to the department to pre-approve signs developed by the CDC's Zoonoses Education Coalition and a sign developed by the PIJAC in conjunction with the CDC titled *Healthy Herp Handling* as an alternative to the required sign content delineated in §169.121(b)(3)(A) - (E). The commenter recommended that the warning signs could have different language than the written warnings. The suggestion was made to reduce the verbiage on the written sign so it is more approachable by consumers at pet stores, is easier to read, and has a more visible font size; however, the written warning could contain more detailed information. Concern was also expressed to allow for the previously mentioned signs in order to meet the department's goal of amending the rule to allow for consistency with CDC recommendations.

RESPONSE: The commission partially agrees. It agrees that the written warning pet stores are required to give to purchasers of reptiles could contain more detailed information than the sign.

The commission does not agree that the proposed required verbiage is overwhelming in content, will prevent the sign from being approachable, or wouldn't be easy to read with visible font. It has a lower word count than the CDC's poster titled *After you touch amphibians or reptiles, wash your hands so you don't get sick.* Additionally, the proposed amendments were formulated based on educational materials prepared by the CDC. Plus, legislature tasked the department with providing form and content via rule for the sign and written warning. To determine if a pet store is in compliance with the overseeing statute's mandates, required language needs to be fairly prescriptive in the rule.

The origin of the Zoonoses Education Coalition's sign submitted by the commenter was not evident. Also, the commission does not agree that the PIJAC poster adequately meets the goal of the rule. The commission does agree, though, that signs or posters prepared specifically by the CDC would be appropriate for meeting the goal of being consistent with CDC's resource information pertaining to the prevention of reptile-associated salmonellosis. Therefore, the department has allowed latitude for pet-store retailers to use signs or posters prepared by and containing the approved logo of the CDC to meet the required warning sign that must be posted as long as the signage still meets the minimum size and prominent display requirements as prescribed by the department in the rule. The written warning must still contain the required verbiage in its entirety as described in the rule. Therefore, the department is addressing this commenter by adding the following verbiage to the rule:

Subsection (c) was amended to state "The written warnings, such as fliers or pamphlets, must contain the same information and statements as required in subsection (b)(3)(A) - (D) and (4) of this section" instead of "The written warnings, such as fliers or pamphlets, must contain the same information and statements as required for the signs."

A new subsection (d) was added as follows: "A sign or poster prepared by and containing the approved logo of the Centers for Disease Control and Prevention pertaining to disease prevention of reptile-associated salmonellosis when handling or housing reptiles may be used to meet the required content for the warning sign; however, the written warning must still contain the required content as described in subsection (b)(3)(A) - (D) and (4) of this section, plus the local health department statement as described in subsection (c) of this section. All signs and posters must meet the guidelines set forth in subsection (b)(1) and (2) of this section."

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §81.004, which provides the Executive Commissioner with the authority to adopt rules necessary for the effective administration and implementation of the Communicable Disease Prevention and Control Act; Health and Safety Code, §81.352, which requires the Executive Commissioner to adopt a rule governing the form and content of the sign and written warning relating to reptile-associated salmonellosis; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rule implements Government Code, §2001.039.

§169.121. Reptile-Associated Salmonellosis.

(a) The Texas Health and Safety Code, §81.352, requires retail stores that sell reptiles to post warning signs and distribute written warnings regarding reptile-associated salmonellosis to purchasers in accordance with the form and content designated by the Executive Commissioner.

(b) The warning signs must meet the following guidelines.

(1) The sign must be a minimum of 8.5 x 11 inches with fonts that are clearly visible and readily draw attention to the notice.

(2) The signs must be prominently displayed at each location where reptiles are displayed, housed, or held.

(3) At a minimum, the contents of the sign must include the following recommendations for preventing transmission of *Salmonella* from reptiles to humans.

(A) Wash your hands thoroughly with soap and running water after feeding reptiles, handling reptiles or reptile cages, or contacting reptile feces or the water from reptile containers or aquariums. If soap and water are not immediately available, use a hand sanitizer and then wash your hands with soap and water as soon as possible. Wash your hands before you touch your mouth and before you prepare, serve, or consume food or drinks. Adults should supervise hand washing for young children.

(B) Avoid contact with reptiles and any items that have been in contact with reptiles if you are a person at increased risk for infection or serious complications of salmonellosis, which, for instance, includes children younger than 5 years of age, adults aged 65 or older, and persons whose immune systems have been weakened by pregnancy, disease (for example, cancer), or certain medical treatments or procedures (for example, chemotherapy or organ transplantations). Keep reptiles out of households or facilities that include such at-risk persons. Consider removing any reptile from your residence and relocating it to a new home before a newborn baby is added to the household.

(C) Do not allow reptiles to roam freely throughout the home or living area. Wash and disinfect surfaces that a reptile or its cage has contacted. Wash any clothing that a reptile has contacted.

(D) Keep reptiles out of kitchens and other areas where food or drink is stored, prepared, served, or consumed. Do not use kitchen sinks to bathe reptiles or to wash their dishes, cages, or aquariums. If bathtubs are used for these purposes, clean them thoroughly and disinfect them with bleach. It is preferable to bathe reptiles in a container (such as a small tub or bin) designated for this use and to clean bathing containers, dishes, cages, or aquariums outside the house in a manner that prevents contact of the discarded material with other people and pets. Wear disposable gloves when washing bathing containers, dishes, cages, or aquariums. Wash your hands after removing the gloves.

(4) The sign must also contain a statement that reptiles carry *Salmonella* bacteria, which can make people sick, but reptiles may not appear to be sick.

(c) The written warnings, such as fliers or pamphlets, must contain the same information and statements as required in subsection (b)(3)(A) - (D) and (4) of this section. The written warnings must also contain a statement that purchasers of reptiles can contact their local health department for questions pertaining to *Salmonella.*

(d) A sign or poster prepared by and containing the approved logo of the Centers for Disease Control and Prevention pertaining to disease prevention of reptile-associated salmonellosis when handling or housing reptiles may be used to meet the required content for the warning sign; however, the written warning must still contain the required content as described in subsection (b)(3)(A) - (D) and (4) of this section, plus the local health department statement as described in subsection (c) of this section. All signs and posters must meet the guidelines set forth in subsection (b)(1) and (2) of this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 24, 2016.

TRD-201605523
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: November 13, 2016
Proposal publication date: July 22, 2016
For further information, please call: (512) 776-6972

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 7. MEMORANDA OF UNDERSTANDING

30 TAC §7.102

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amended §7.102.

The commission adopts amended §7.102 *without change* to the proposed text as published in the June 10, 2016, issue of the *Texas Register* (41 TexReg 4157), and therefore will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

The Memorandum of Understanding (MOU) between the Texas State Soil and Water Conservation Board (TSSWCB) and TCEQ became effective on June 9, 1997. A Letter of Agreement (LOA) regarding inspections of dry poultry litter operations and complaint protocol for water quality complaints on animal feeding operations (AFOs) with a certified water quality management plan (WQMP) and dry poultry litter operations became effective on August 24, 2007. Changes to the MOU are necessary to reflect the TCEQ's current statutory name and the TSSWCB and TCEQ's current procedures for coordinating the jurisdictional authority, program responsibilities, procedural mechanisms for point and nonpoint source pollution programs, and to incorporate applicable conditions of the LOA into the MOU. To update the MOU, the TSSWCB initiated rulemaking for 31 TAC §523.5 (Memorandum of Understanding between the Texas State Soil and Water Conservation Board and the Texas Commission on Environmental Quality) on November 19, 2015, and published for comment the proposal in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9099). During the TSSWCB comment period no comments were received. On January 21, 2016, the TSSWCB adopted the amendment to 31 TAC §523.5, specifically adopting the MOU and making the rule effective (February 19, 2016, issue of the *Texas Register* (41 TexReg 1253)). This rulemaking adopts the amendment of the current MOU in §7.102 and replaces it with an adoption by reference of the full text of the revised MOU at 31 TAC §523.5.

Section by Section Discussion

The adopted amendment to §7.102 changes the agency's name from the "Texas Natural Resource Conservation Commission" to the "Texas Commission on Environmental Quality" and adopts by reference the MOU adopted by the TSSWCB in 31 TAC §523.5.

Final Regulatory Impact Determination

The commission reviewed the adopted rule in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rule is not subject to Texas Government Code, §2001.0225 because it does not meet the criteria for a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the adopted rule is to update the MOU between the TSSWCB and the TCEQ to reflect the TCEQ's current statutory name and the TSSWCB and TCEQ's current procedures for coordinating the jurisdictional authority, program responsibilities, and procedural mechanisms for point and nonpoint source pollution programs. The original MOU between the agencies became effective June 9, 1997. An LOA regarding inspections of dry poultry litter operations and complaint protocol for water quality complaints on AFOs with a certified WQMP and dry poultry litter operations became effective on August 24, 2007. Changes to the MOU are also necessary to incorporate applicable conditions of the LOA into the MOU. The adopted amendment would replace the LOA.

The adopted rule does not meet the definition of a major environmental rule because the adopted rule only explains existing agency responsibilities rather than creates substantive requirements to protect the environment. The intent of the rule is merely to clarify and explain jurisdiction of the respective agencies. Because the intent of the rule does not create or require actions for the purpose of protecting the environment or reducing risks to human health from environmental exposure, the adopted rule is not an environmental rule. Additionally, the adopted rule does not meet the definition of a major environmental rule because it is not anticipated that the adopted rule will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the adopted rule merely explicates jurisdiction of the respective agencies and does not impose new requirements. Finally, the adopted rule action does not meet any of the four applicability requirements for a major environmental rule listed in Texas Government Code,

§2001.0225(a). Therefore, the commission concludes that the adopted rule does not meet the definition of a major environmental rule.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether the adopted rule constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rulemaking is to update the MOU between the TSSWCB and the TCEQ to reflect the TCEQ's current statutory name and the TSSWCB and TCEQ's current procedures for coordinating the jurisdictional authority, program responsibilities, and procedural mechanisms for point and nonpoint source pollution programs. The adopted rulemaking would substantially advance this stated purpose by providing one reference point interpreting the jurisdiction of the respective agencies. Promulgation and enforcement of the adopted rule would be neither a statutory nor a constitutional taking of public or private real property because the adopted rule does not affect real property. Because the regulation does not affect real property, it does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. The adopted rule merely clarifies and explains jurisdiction of the respective agencies. Therefore, the adopted rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received on consistency with the CMP.

Public Comment

The commission held a public hearing on July 12, 2016. The comment period closed on July 15, 2016. The commission did not receive any comments on this rulemaking.

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.104, concerning Memoranda of Understanding (MOU), which authorizes the commission to enter into MOUs and adopt them as rules with other state agencies. Additionally, the amendment is adopted under TWC, §5.103 concerning Rules and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state.

The adopted amendment implements 31 TAC §523.5.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 21, 2016.

TRD-201605487
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: November 10, 2016
Proposal publication date: June 10, 2016
For further information, please call: (512) 239-2613

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 354. MEMORANDA OF UNDERSTANDING

31 TAC §354.2, §354.5

The Texas Water Development Board (TWDB) adopts the repeal of 31 Texas Administrative Code (TAC) §354.2 and §354.5, without changes to the text as published in the August 26, 2016, issue of the *Texas Register* (41 TexReg 6394).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED REPEALS.

The TWDB adopts the repeal of §354.2, relating to financing and construction of an international wastewater treatment facility in Nuevo Laredo, Tamaulipas, Mexico, because the Memorandum of Understanding (MOU) between the TWDB and the International Boundary and Water Commission has expired by its own terms.

The TWDB also adopts the repeal of §354.5, relating to coordinated reviews between the TWDB and the Texas Commission on Environmental Quality (TCEQ), because the Letter of Agreement (LOA) has been superseded.

SECTION BY SECTION DISCUSSION OF THE ADOPTED REPEALS.

Section 354.2 is repealed due to fulfillment of the conditions of the MOU. By its terms, the MOU was to be in effect for five years after the last units of the wastewater treatment facility began operations. The Nuevo Laredo International Wastewater Treatment Plant began operations in 1996, and the final phase was completed in January 2000.

Since September 21, 1992, the TWDB and the TCEQ have coordinated the reviews related to the design criteria for public water systems and wastewater facility construction in a Letter of Agreement (LOA or Agreement). The existing Agreement in §354.5 has been superseded and the new Agreement reflecting the current interaction between the TWDB and the TCEQ during the coordinated review of water supply projects seeking financing from the TWDB is adopted elsewhere in this issue of the *Texas Register.*

REGULATORY IMPACT ANALYSIS.

The Board reviewed the adopted repeals in light of the regulatory analysis requirements of Texas Government Code §2001.0225,

and determined that the repeals are not subject to Texas Government Code §2001.0225, because they do not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of these repeals is to remove an MOU that has been fulfilled and an LOA that has been superseded.

Even if the adopted repeals were major environmental rules, Texas Government Code, §2001.0225 still would not apply to these repeals because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. These repeals do not meet any of these four applicability criteria because they: 1) do not exceed the Federal Water Pollution Control Act or any other federal law; 2) do not exceed an express requirement of state law; 3) do not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) are not adopted solely under the general powers of the agency, but rather are also adopted under authority of Texas Water Code §§6.101 and 6.104. Therefore, these adopted repeals do not fall under any of the applicable criteria in Texas Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT.

The Board evaluated these adopted repeals and performed an analysis of whether they constitute a taking under Texas Government Code Chapter 2007. The specific purpose of these repeals is to remove an MOU that has been fulfilled and has expired by its own terms and an LOA that has been superseded.

The Board's analysis indicates that Texas Government Code Chapter 2007 does not apply to these adopted repeals because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). Nevertheless, the Board further evaluated the adopted repeals and performed an assessment of whether they constitute a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of these adopted repeals would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed repeals do not affect a landowner's rights in private real property because they do not burden or restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the adopted repeals do not constitute a taking under Texas Government Code Chapter 2007.

PUBLIC COMMENT.

The proposed repeals were open for public comment, and the comment period ended on September 26, 2016. No comments were received, and no changes to the proposed repeals have been made.

STATUTORY AUTHORITY.

These repeals are adopted under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules, and Texas Water Code §6.104, which requires the board to adopt by rule any memorandum of understanding between the TWDB and any other state agency.

The adopted repeals affect Texas Water Code §6.104.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 24, 2016.

TRD-201605498
Les Trobman
General Counsel
Texas Water Development Board
Effective date: November 13, 2016
Proposal publication date: August 26, 2016
For further information, please call: (512) 463-7686

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31 TAC §§354.2, 354.5, 354.7 - 354.15

The Texas Water Development Board (TWDB) adopts new 31 Texas Administrative Code (TAC) §§354.2, 354.5, and 354.7 - 354.15, without changes as published in the August 26, 2016, issue of the *Texas Register* (41 TexReg 6395). Existing 31 TAC §354.2 and §354.5 are repealed elsewhere in this issue of the *Texas Register.*

BACKGROUND AND SUMMARY OF THE FACTUAL ISSUES FOR THE ADOPTED RULES.

Texas Water Code §6.104 requires the TWDB to adopt by rule any Memorandum of Understanding (MOU) between the Board and another state agency. These adopted rules incorporate existing MOUs and similar agreements between the TWDB and other state agencies.

SECTION BY SECTION DISCUSSION OF THE ADOPTED RULES.

§354.2. Memorandum of Understanding Between the Office of the Governor and the Texas Water Development Board.

The Office of the Governor (OOG) and the TWDB executed an MOU authorizing the TWDB to administer emergency appropriations under Texas Government Code Chapter 401, Subchapter D.

The provisions of the MOU require the TWDB to administer up to $6.8 million in the Disaster Contingency Account, General Revenue Account 0453, to enhance existing flood notification systems and make funds available to state and local entities for floodplain management. The adopted rule contains the MOU that went into effect on December 10, 2015 and will expire on August 31, 2017, or upon expenditure of all available funds.

§354.5. Letter of Agreement Between the Texas Water Development Board and the Texas Commission on Environmental Quality.

Since September 21, 1992, the TWDB and the Texas Commission on Environmental Quality (TCEQ) have coordinated

reviews related to the design criteria for public water systems and wastewater facility construction in a Letter of Agreement (LOA or Agreement). This Agreement, which was executed on July 1, 2015, replaces all prior and existing LOAs in effect with the TCEQ and its predecessor agencies and accurately reflects the current interaction between the TWDB and the TCEQ during coordinated review of water supply projects seeking financing from the TWDB. The existing §354.5 is published for repeal elsewhere in this issue of the *Texas Register.*

§354.7. Letter of Agreement Between the Railroad Commission of Texas and the Texas Water Development Board.

The Railroad Commission of Texas (RRC) and the TWDB executed an LOA regarding access to linen maps owned by the RRC that will be used by the TWDB to identify and designate regional brackish groundwater production zones as mandated by the 84th Legislature. The adopted rule contains the LOA that went into effect on February 25, 2016.

§354.8. Memorandum of Understanding Between the Texas Water Development Board and the Texas Department of Information Resources.

The TWDB and the Texas Department of Information Resources (DIR) executed an MOU for electronic and information resources accessibility web scanning services. The MOU provides that DIR, through a third-party service provider, will conduct no-cost monthly accessibility scans of pages on the TWDB website and provide scan reports to TWDB and DIR. The adopted rule contains the MOU that went into effect on March 30, 2015 and continues until terminated by either of the parties or on termination of the underlying agreement with the third-party service provider.

§354.9. Memorandum of Understanding Between the Public Utility Commission of Texas and the Texas Water Development Board.

The TWDB executed an MOU with the Public Utility Commission of Texas (PUCT) to maintain a public online map viewer. The MOU provides that the Texas Natural Resources Information System (TNRIS), a TWDB division, will maintain the existing public online map viewer with data collection and assistance from the PUCT. The adopted rule contains the MOU that went into effect on May 18, 2016 and will terminate on August 31, 2017 unless a two-year renewal option is exercised.

§354.10. Memorandum of Agreement Between the Texas Water Development Board, the Texas Parks and Wildlife Department and the Texas Commission on Environmental Quality.

The TWDB, the Texas Parks and Wildlife Department (TPWD) and the TCEQ executed an MOA to establish an Instream Flow Studies Coordinating Committee. The adopted rule contains the MOA that went into effect on October 17, 2002 and continues until terminated by 30-day written notice of intent to cancel by any of the participating agencies.

§354.11. Memorandum of Agreement Between the Texas Water Development Board and the Texas General Land Office.

The TWDB and the Texas General Land Office (GLO) executed an MOA to coordinate the installation and operation of the Texas Coastal Ocean Observation Network. The adopted rule contains the MOA that went into effect on September 22, 2003 and continues until terminated by either party on 30-day written notice.

§354.12. Memorandum of Agreement Between the Texas Water Development Board and the Texas Commission on Environmental Quality.

The TWDB and the TCEQ executed an MOA to coordinate program responsibilities related to groundwater conservation district management planning approval, review and oversight. The adopted rule contains the MOA that went into effect on September 17, 2007 and continues until terminated by either party on 30-day written notice.

§354.13. Memorandum of Agreement Between the Texas Water Development Board and the Texas Board of Professional Geoscientists.

The TWDB and the Texas Board of Professional Geoscientists (TBPG) executed an MOA to coordinate information regarding complaints under and potential violations of the Texas Geoscience Practice Act. The adopted rule contains the MOA that went into effect on June 13, 2014 and continues until rescinded by either agency.

§354.14. Agreement Between the Texas Water Development Board and the Texas Department of Transportation.

The TWDB and the Texas Department of Transportation (TxDOT) entered into an Agreement for Right of Entry and Temporary Use of Highway Right of Way effective March 31, 2005 and continuing until terminated by either party on 30-day written notice. The adopted rule contains the Agreement that allows TWDB access to property under the jurisdiction of TxDOT in order to monitor water wells and outlines the conditions of such access and advance notice required.

§354.15. Agreement Between the Texas Water Development Board and the Texas Comptroller of Public Accounts.

The TWDB and the Texas Comptroller of Public Accounts (Comptroller) entered into an Agreement in Furtherance of Transparency Initiative on April 4, 2014. The adopted rule contains the Agreement that provides for TWDB to share debt and financial liability information with the Comptroller and outlines the terms of use for the information.

REGULATORY IMPACT ANALYSIS.

The board reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225 because none of the adopted rules meets the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to adopt by rule the MOUs and similar agreements as required by Texas Water Code §6.104.

Even if the adopted rules were major environmental rules, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not

meet any of these four applicability criteria because it: 1) does not exceed any standard set by a federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not adopted solely under the general powers of the agency, but rather is also adopted under authority of Texas Water Code §§6.101 and 6.104. Therefore, these adopted rules do not fall under any of the applicable criteria in Texas Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT.

The board evaluated these adopted rules and performed an analysis of whether they constitute a taking under Texas Government Code Chapter 2007. The specific purpose of these rules is to adopt by rule the MOUs and similar agreements between the TWDB and various state agencies.

The board's analysis indicates that Texas Government Code Chapter 2007 does not apply to these adopted rules because this rulemaking is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). Nevertheless, the board further evaluated these adopted rules and performed an assessment of whether they constitute a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of these adopted rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulations do not affect a landowner's rights in private real property because this rulemaking does not burden or restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the adopted rules do not constitute a taking under Texas Government Code Chapter 2007.

PUBLIC COMMENT.

The proposed rules were open for public comment, and the comment period ended on September 26, 2016. No comments were received, and no changes to the proposed rules have been made.

STATUTORY AUTHORITY.

These rules are adopted under Texas Water Code §6.101, which gives the TWDB authority to adopt rules, and §6.104, which requires the TWDB to adopt by rule any memorandum of understanding between the TWDB and any other state agency.

Cross reference to statute: Texas Water Code §6.101 and §6.104.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 24, 2016.

TRD-201605499
Les Trobman
General Counsel
Texas Water Development Board
Effective date: November 13, 2016
Proposal publication date: August 26, 2016
For further information, please call: (512) 463-7686

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Avery Young
First Grade

Review Of Agency Rules

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice files this notice of intent to review §151.6, concerning the Petition for the Adoption of a Rule. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register,* the Texas Board of Criminal Justice contemporaneously proposes amendments to §151.6.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this notice in the *Texas Register.*

TRD-201605442
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Filed: October 19, 2016

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The Texas Board of Criminal Justice files this notice of intent to review §155.21, concerning Naming of a Texas Department of Criminal Justice Owned Facility. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register,* the Texas Board of Criminal Justice contemporaneously proposes amendments to §155.21.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this notice in the *Texas Register.*.

TRD-201605444
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Filed: October 19, 2016

♦ ♦ ♦

The Texas Board of Criminal Justice files this notice of intent to review §161.21, concerning the Role of the Judicial Advisory Council. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register,* the Texas Board of Criminal Justice contemporaneously proposes amendments to §161.21.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this notice in the *Texas Register.*

TRD-201605447
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Filed: October 19, 2016

♦ ♦ ♦

The Texas Board of Criminal Justice files this notice of intent to review §163.5, concerning Waiver to Standards. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register,* the Texas Board of Criminal Justice contemporaneously proposes amendments to §163.5.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this notice in the *Texas Register.*

TRD-201605449
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Filed: October 19, 2016

♦ ♦ ♦

The Texas Board of Criminal Justice files this notice of intent to review §163.46, concerning Allocation Formula for Community Corrections Program. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this notice in the *Texas Register.*

TRD-201605465
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Filed: October 19, 2016

Texas Department of Insurance

Title 28, Part 1

The Texas Department of Insurance, in accordance with Texas Government Code §2001.039, will review and consider for readoption, revision, or repeal all sections of the following chapters of 28 TAC Part 1: Chapter 3, Life, Accident and Health Insurance and Annuities; Chapter 8, Hazardous Condition; Chapter 10, Workers' Compensation Health Care Networks; Chapter 12, Independent Review Organizations; Chapter 23, Prepaid Legal Service; Chapter 24, Discount Health Care Program Principles of Regulation; Chapter 29, Guaranty Acts; and Chapter 31, Liquidation.

The department will consider whether the reasons for initially adopting these rules continue to exist and whether these rules should be repealed, readopted, or readopted with amendments. Any repeals or necessary amendments identified during the review of these rules will be proposed in a separate rulemaking document and published in the *Texas Register* in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TDI invites the public and affected persons to comment on this rule review proposal. Submit your written comments on the proposal no later than 5 p.m., Central time, on December 5, 2016. Send written comments by mail to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, or by email to chiefclerk@tdi.texas.gov.

TRD-201605553
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: October 25, 2016

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 7 TAC §3.37(a)

First determine the bank's assessable asset group, then:

Steps	Assessment Calculation:	Assessable Asset Group: 1	2	3	4	5	6	7
1.	For assessable assets of at least (in thousands)	$0	$10,000	$25,000	$40,000	$70,000	$100,000	$250,000
	But not greater than (in thousands):	$10,000	$25,000	$40,000	$70,000	$100,000	$250,000	$1,000,000
2.	Take the total assessable assets over (in thousands):	$0	$10,000	$25,000	$40,000	$70,000	$100,000	$250,000
3.	And multiply by the **marginal assessment rate**:	0.789600	0.448000	0.212800	0.208320	0.201600	0.123200	0.082880
4.	Add this result to the **base assessment amount**:	$2,789	$10,685	$17,405	$20,597	$26,847	$32,895	$51,375
5.	Multiply the total by the factor corresponding to the bank's CAMELS composite rating (as defined in §3.36(b)):							
	a. Rating of 3, 4 or 5:	2.0	2.0	2.0	2.0	2.0	2.0	2.0
	b. Rating of 1 or 2:	1.0	1.0	1.0	1.0	1.0	1.0	1.0
6.	And multiply the total by 0.875 if bank has on-book [~~assessable~~] assets of $500 million or less and a CAMELS composite rating of 1 or 2.							

Steps	Assessment Calculation:	Assessable Asset Group: 8	9	10	11	12	13	14
1.	For assessable assets of at least (in thousands):	$1,000,000	$5,000,000	$10,000,000	$20,000,000	$40,000,000	$60,000,000	$80,000,000
	But not greater than (in thousands):	$5,000,000	$10,000,000	$20,000,000	$40,000,000	$60,000,000	$80,000,000	-----
2.	Take the total assessable assets over (in thousands):	$1,000,000	$5,000,000	$10,000,000	$20,000,000	$40,000,000	$60,000,000	$80,000,000
3.	And multiply by the **marginal assessment rate**:	0.073920	0.067200	0.053933	0.032130	0.020655	0.013770	0.009180
4.	Add this result to the **base assessment amount** of:	$113,535	$409,215	$745,215	$1,284,545	$1,927,145	$2,340,245	$2,615,645
5.	And multiply the total by the factor corresponding to the bank's CAMELS composite rating:							
	a. Composite rating of 3, 4, or 5:	2.0	2.0	2.0	2.0	2.0	2.0	2.0
	b. Composite rating of 1 or 2:	1.0	1.0	1.0	1.0	1.0	1.0	1.0

Figure: 22 TAC §194.12(e)(2)

TYPE OF LIMITED CERTIFICATE	CLINICAL INSTRUCTION (# OF CLOCK HOURS)	CLINICAL EXPERIENCE (# OF CLOCK HOURS)
Skull	50	100
Chest	6	100
Spine	25	100
Extremities	30	100
Chiropractic	60	100
Podiatric	4	50

Figure: 22 TAC §194.31(c)(9)

TEXAS BOARD OF MEDICAL RADIOLOGIC TECHNOLOGY
P.O. Box 2018, MC-263
Austin, Texas 78768-2018

PROFESSIONAL LIABILITY CLAIMS REPORT

FILE ONE REPORT FOR EACH DEFENDANT.

PART I. COMPLETE FOR ALL CLAIMS OR COMPLAINTS AND FILE WITH THE TEXAS BOARD OF MEDICAL RADIOLOGIC TECHNOLOGY (BOARD) WITHIN 30 DAYS FROM RECEIPT OF COMPLAINT OR CLAIM. INCLUDE COPY OF CLAIM LETTER AND/OR PLAINTIFF'S COMPLAINT, AND EXPERT REPORT. IF AN EXPERT REPORT IS NOT FILED WITH THE COURT AT THE TIME THE LAWSUIT IS FILED, THE EXPERT REPORT SHALL BE FILED WITH THE BOARD WITHIN 30 DAYS AFTER IT IS RECEIVED.

1. Name and address of insurer:

   _____
   _____
   _____

2. Defendant: _____

   Certificate or permit number: _____

3. Plaintiff's name: _____

4. Policy number: _____

5. Date claim reported to insurer/self-insured certificate or permit holder: _____

6. Type of complaint: _____ claim only _____ lawsuit

7. Initial reserve amount after investigation: _____

   If this is not determined within 30 days, report this data within 30 days after determination.)

_____
Person completing this report (SIGNATURE)

_____
Person completing this report (PRINT NAME) Phone: _____

PART II. COMPLETE AFTER DISPOSITION OF THE CLAIM AS DEFINED IN 22 TAC §194.31, INCLUDING DISMISSALS OR SETTLEMENTS. FILE WITH THE BOARD WITHIN 105 DAYS AFTER DISPOSITION OF THE CLAIM. A COPY OF A COURT ORDER OR SETTLEMENT AGREEMENT MAY BE USED.

1. Date of disposition: _____

2. Type of Disposition: _____ (1) Settlement _____ (2) Judgment after trial _____ (3) Other (please specify)

3. Amount of indemnity agreed upon or ordered on behalf of this defendant: $ _____. Note: If percentage of fault was not determined by the court or insurer in the case of multiple defendants, the insurer may report the total amount paid for the claim followed by a slash and the number of insured defendants. (Example: $100,000/3)

4. Appeal, if known: _____Yes _____ No. If yes, which party:

_____
Person completing this report (SIGNATURE)

_____
Person completing this report (PRINT NAME) Phone: _____

Figure: 34 TAC §20.437(f)

P, max.	Expected Life
6.14A	10
6.49A	11
6.81A	12
7.10A	13
7.36A	14
7.60A	15
7.82A	16
8.02A	17
8.20A	18
8.36A	19
8.51A	20
8.65A	21
8.77A	22
8.88A	23
8.98A	24
9.07A	25
9.16A	26
9.23A	27
9.30A	28
9.41A	29
9.43A	30

Figure: 34 TAC §20.475(2)(A)

C. Kirk Root Designs

18kt Yellow gold with platinum star
Victorian design, typical style of 1880
Scrollwork and satin finish unique to the period
The center star is brightly polished and is made of pure platinum
The Texas seal wreath design is shown around the center star
The legislative session number is at the top of the wreath
The year of the session is below the star (inside the wreath)
"TEXAS HOUSE" is written in a typical 1880's Calligraphy style print
Shells on the top and bottom of the pin are symbolic of the Texas coast
Actual size 21.0mm (U.S. Nickel)

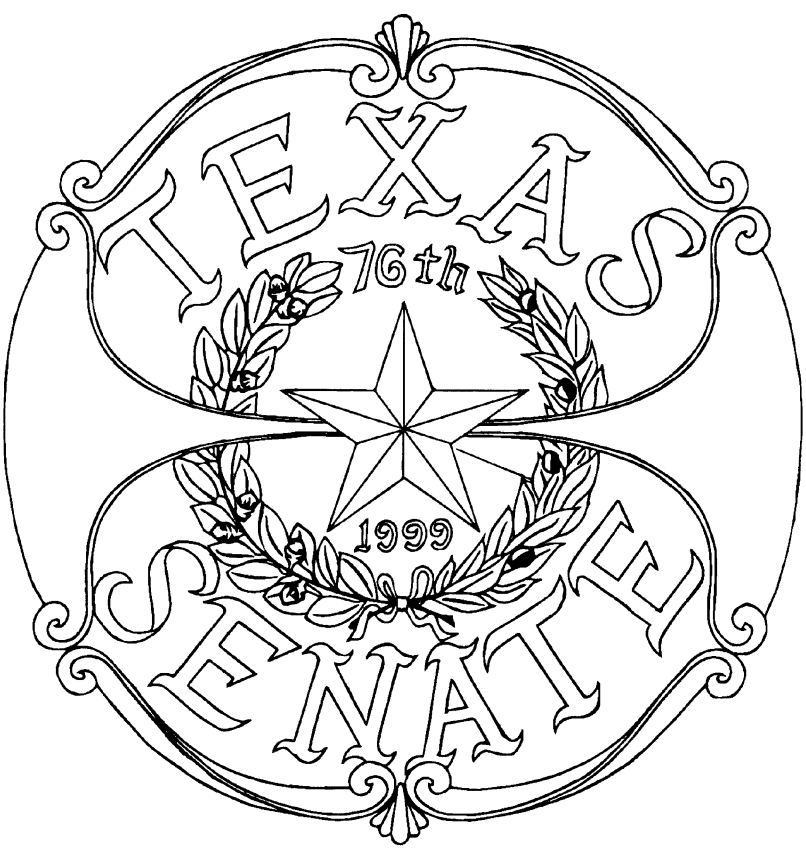
www.kirkrootdesigns.com

10000 Research Blvd., Suite 126 ★ Austin, TX 78759 ★ (512) 346-1780 ★ Fax (512) 346-4113

Figure: 34 TAC §20.475(2)(B)

C. Kirk Root Designs

18kt Yellow gold with platinum star
Victorian design, typical style of 1880
Scrollwork and satin finish unique to the period
The center star is brightly polished and is made of pure platinum
The Texas seal wreath design is shown around the center star
The legislative session number is at the top of the wreath
The year of the session is below the star (inside the wreath)
"TEXAS SENATE" is written in a typical 1880's Calligraphy style print
Shells on the top and bottom of the pin are symbolic of the Texas coast
Actual size 21.0mm (U.S. Nickel)



www.kirkrootdesigns.com

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Figure: 34 TAC §20.475(7)

C. Kirk Root Designs

Victorian design, typical style of 1880
The center star is brightly polished and is made of pure platinum
The Texas seal wreath design wraps around ring meeting at the center star
"TEXAS HOUSE" is written in a typical 1880's Calligraphy style print

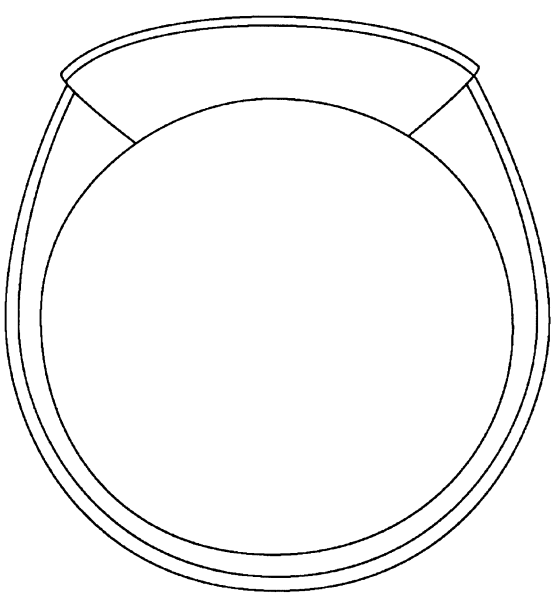

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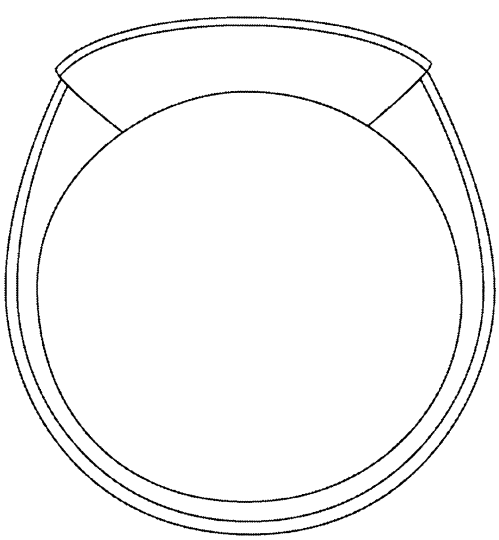
Figure: 34 TAC §20.475(8)

C. Kirk Root Designs

18kt Yellow gold with platinum star
Victorian design, typical style of 1880
The center star is brightly polished and is made of pure platinum
The Texas seal wreath design wraps around ring meeting at the center star
"TEXAS SENATE" is written in a typical 1880's Calligraphy style print



www.kirkrootdesigns.com

10000 Research Blvd., Suite 126 ★ Austin, TX 78759 ★ (512) 346-1780 ★ Fax (512) 346-4113

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Correction of Error

The Office of the Attorney General published a Request for Opinion (RQ-0133-KP) in the October 21, 2016 issue of the *Texas Register*. Due to a Texas Register editing error, the submission was published with two brief deadline dates instead of a single date. The correct brief deadline for RQ-133-KP is October 27, 2016.

TRD-201605540

♦ ♦ ♦

Texas Health and Safety Code and Texas Water Code Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pursuant to §7.110 of the Texas Water Code the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *State of Texas v. Ponter & Souder LLC and Sweetwater Corporation;* Cause No. D-1-GN-15-001597; in the 419TJ Judicial District Court, Travis County, Texas.

Background: Defendant Ponter & Souder LLC owns an industrial and hazardous waste storage, processing, and transfer facility in Humble, Harris County, Texas, which was leased to Defendant Sweetwater Corporation, the operator of the facility. This settlement pertains to Ponter & Sounder LLC only. The State initiated the suit on behalf of the Texas Commission on Environmental Quality ("TCEQ") to enforce Texas statutes and rules regarding the proper disposal and storage of industrial and hazardous waste substances, and to address the hundreds of containers of hazardous and industrial solid wastes illegally stockpiled at the facility.

Proposed Settlement: The parties propose an Agreed Final Judgment and Permanent Injunction, which requires Ponter & Souder LLC to complete the remediation and closure of the facility according to the TCEQ-approved Closure Plan; and provides for an award of civil penalties to the State in the amount of $50,000, part of which may be permanently deferred upon timely compliance with the Closure Plan. The proposed judgment also awards the State its reasonable attorney's fees.

For a complete description of the proposed settlement, the Agreed Final Judgment and Permanent Injunction should be reviewed. The proposed judgment may be examined at the Office of the Attorney General, 300 W. 15th Street, 10th Floor, Austin, Texas, and copies may be obtained in person or by mail for the cost of copying. A copy is also lodged with the Travis County District Court. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Craig J. Pritzlaff, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201605524
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: October 24, 2016

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/31/16 - 11/06/16 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/31/16 - 11/06/16 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201605537
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 25, 2016

♦ ♦ ♦

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is December 9, 2016. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on December 9, 2016. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Alberto C. Loredo dba Loredo Trucking; DOCKET NUMBER: 2016-0720-WQ-E; IDENTIFIER: RN106581549; LOCATION: Waco, McLennan County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: America Pride Petroleum Incorporated dba Country Corner; DOCKET NUMBER: 2016-0951-PST-E; IDENTIFIER: RN101499499; LOCATION: Burnet, Burnet County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $3,504; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(3) COMPANY: Aziz Maredia dba China Market; DOCKET NUMBER: 2016-1277-PST-E; IDENTIFIER: RN101763282; LOCATION: China, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: B AND S SEPTIC TANK CORPORATION; DOCKET NUMBER: 2016-0991-WQ-E; IDENTIFIER: RN108526906; LOCATION: Granite Shoals, Burnet County; TYPE OF FACILITY: aggregate production operation (APO); RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater under a Texas Pollutant Discharge Elimination System General Permit associated with industrial activities; and 30 TAC §342.25(b), by failing to register the site as an APO no later than the tenth business day before the beginning date of regulated activities; PENALTY: $8,563; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-6155; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(5) COMPANY: B.T. SIKES WATER WELLS, INCORPORATED; DOCKET NUMBER: 2016-1780-WR-E; IDENTIFIER: RN109314039; LOCATION: Orange Grove, Jim Wells County; TYPE OF FACILITY: Penitas Creek; RULES VIOLATED: TWC, §11.081 and §11.121, by failing to obtain authorization prior to impounding, diverting, or using state water; PENALTY: $350; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-6155; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: Bandera County (Road and Bridge); DOCKET NUMBER: 2016-1781-WR-E; IDENTIFIER: RN109328617; LOCATION: Utopia, Bandera County; TYPE OF FACILITY: Sabinal River; RULES VIOLATED: TWC, §11.081 and §11.121, by failing to obtain authorization prior to impounding, diverting, or using state water; PENALTY: $350; ENFORCEMENT COORDINATOR: Ross Luedtke, (512) 239-3157; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-30 96.

(7) COMPANY: BERNARD BUSINESS, LLC dba BERNARD GROCERY; DOCKET NUMBER: 2016-1287-PST-E; IDENTIFIER: RN101282242; LOCATION: Brazoria, Brazoria County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month; and 30 TAC §334.7(d)(3) and §334.8(c)(4)(C), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form within 30 days of ownership change; PENALTY: $5,853; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Catholic Health Initiatives; DOCKET NUMBER: 2016-1196-PST-E; IDENTIFIER: RN105343131; LOCATION: Houston, Harris County; TYPE OF FACILITY: hospital with underground storage tanks (USTs); RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $2,438; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Central Texas Water Supply Corporation; DOCKET NUMBER: 2016-1079-IWD-E; IDENTIFIER: RN101919926; LOCATION: Harker Heights, Bell County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §30 5.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0005146000, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $5,062; Supplemental Environmental Project offset amount of $2,025; ENFORCEMENT COORDINATOR: Caleb Olson, (512) 239-2541; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: Christopher Scott Tyre; DOCKET NUMBER: 2016-0393-WQ-E; IDENTIFIER: RN108740861; LOCATION: Center, Shelby County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities under Texas Pollutant Discharge Elimination System General Permit Number TXR150000; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(11) COMPANY: City of Arp; DOCKET NUMBER: 2016-0800-MWD-E; IDENTIFIER: RN101720498; LOCATION: Arp, Smith County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §30 5.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010511001, Effluent Limitations and Monitoring Requirements

Number 1, by failing to comply with permitted effluent limits; PENALTY: $9,150; Supplemental Environmental Project offset amount of $7,320; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(12) COMPANY: City of Austin; DOCKET NUMBER: 2016-0073-WQ-E; IDENTIFIER: RN101220085 and RN101607794; LOCATION: Austin, Travis County; TYPE OF FACILITY: public water system and wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of a pollutant into or adjacent to water in the state; TWC, §26.039(b), by failing to provide notification to the TCEQ of an accidental discharge which causes pollution within 24 hours of the occurrence; and TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of sewage into or adjacent to water in the state; PENALTY: $30,937; Supplemental Environmental Project offset amount of $30,937; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(13) COMPANY: City of Grand Prairie; DOCKET NUMBER: 2016-1341-PST-E; IDENTIFIER: RN101846004; LOCATION: Grand Prairie, Dallas County; TYPE OF FACILITY: fleet refueling and maintenance facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month; 30 TAC §334.49(a)(4) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system; and 30 TAC §334.45(c)(3)(A), by failing to properly anchor all emergency shut-off (shear) valves for the pressurized piping under the fuel dispensers; PENALTY: $6,751; ENFORCEMENT COORDINATOR: Claudia Corrales, (512) 239-4935; REGIONAL OFFICE: 230 9 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: City of Groesbeck; DOCKET NUMBER: 2016-1012-PWS-E; IDENTIFIER: RN101384741; LOCATION: Groesbeck, Limestone County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.111(c)(3)(B)(i) and Texas Health and Safety Code (THSC), §341.031(a), by failing to achieve the removal/inactivation requirements for Cryptosporidium at the surface water treatment plant (TP14960) for the months of January 2016 - April 2016; 30 TAC §290.115(f)(1) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level of 0.060 milligrams per liter for total haloacetic acids based on the locational running annual average; PENALTY: $1,755; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: City of Paradise; DOCKET NUMBER: 2016-0713-PWS-E; IDENTIFIER: RN101187193; LOCATION: Wise, Wise County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter (mg/L) for total trihalomethanes, based on the locational running annual average; and 30 TAC §290.115(f)(1) and THSC, §341.0315(c), by failing to comply with the MCL of 0.060 mg/L for haloacetic acids, based on the locational running annual average; PENALTY: $345; ENFORCEMENT COORDINATOR: Ross Luedtke, (512) 239-3157; REGIONAL OFFICE: 230 9 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: City of Ranger; DOCKET NUMBER: 2016-0488-PWS-E; IDENTIFIER: RN101454841; LOCATION: Ranger, Eastland County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director (ED) each quarter by the tenth day of the month following the end of the quarter for the third quarter of 2015; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide the public notification and submit a copy of the public notification to the ED regarding the failure to conduct increased coliform monitoring for the month of June 2014; 30 TAC §290.117(c)(2)(A), (h), and (i)(1) and 40 Code of Federal Regulations (CFR) §141.86 and §141.90(a), by failing to collect lead and copper tap samples at the required 20 sample sites, have the samples analyzed and report the results to the ED for the July 1, 2015 - December 31, 2015, monitoring period; 30 TAC §290.117(e)(2), (h), and (i)(3) and §290.122(c)(2)(A) and (f), and 40 CFR §141.87 and §141.90(a), by failing to conduct water quality parameter sampling at each of the facility's entry points and the required distribution sample sites for the six-month period (January 1, 2013 - June 30, 2013) during which the copper action level was exceeded and the following two consecutive six-month periods (July 1, 2013 - December 31, 2013, and January 1, 2014 - June 30, 2014), and failing to conduct water quality parameter sampling at each of the facility's entry points and the required distribution sample sites for the six-month period (July 1, 2014 - December 31, 2014) during which the lead action level was exceeded, have the samples analyzed, and report the results to the ED, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to conduct all of the required water quality parameter sampling during the January 1, 2013 - June 30, 2013, July 1, 2013 - December 31, 2013, January 1, 2014 - June 30, 2014, and July 1, 2014 - December 31, 2014, monitoring periods; 30 TAC §290.117(d)(2)(A), (h), and (i)(2) and §290.122(c)(2)(A) and (f), and 40 CFR §141.88 and §141.90(b), by failing to collect one lead and copper sample from each of the facility's entry points no later than 180 days after the end of the January 1, 2013 - June 30, 2013, monitoring period during which the copper action level was exceeded, have the samples analyzed, and report the results to the ED, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect one lead and copper sample from each of the facility's entry points no later than 180 days after the end of the January 1, 2013 - June 30, 2013, monitoring period; 30 TAC §290.117(g)(2)(A) and §290.122(b)(2)(A) and (f), and 40 CFR §141.83 and §141.90(d)(1), by failing to submit a recommendation to the ED for source water treatment within 180 days after the end of the January 1, 2013 - June 30, 2013, monitoring period during which the copper action level was exceeded, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a recommendation to the ED for source water treatment; and 30 TAC §290.117(f)(3)(A) and §290.122(b)(2)(A) and (f), and 40 CFR §§141.81(e)(1), 141.82(a), and 141.90(c)(2), by failing to submit a recommendation to the ED for optimal corrosion control treatment within six months after the end of the January 1, 2013 - June 30, 2013, monitoring period during which the copper action level was exceeded, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a recommendation to the ED for optimal corrosion control treatment; PENALTY: $3,768; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(17) COMPANY: City of Robert Lee; DOCKET NUMBER: 2016-0943-MWD-E; IDENTIFIER: RN101920163; LOCATION: Robert Lee, Coke County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §210.6(1)(B) and §210.34(2) and Reclaimed Water Authorization Number R13901001, Sampling and Analysis IV, by failing to conduct sampling of the reclaimed water prior to distribution to a user; 30 TAC §§30 5.125(1) and (5), 319.6, and 319.11(c) and Texas Pollution Elimination Discharge System

(TPDES) Permit Number WQ0013901001, Operational Requirements Number 1, by failing to properly operate and maintain the facility and all of its systems of collection, treatment, and disposal; and 30 TAC §30 .350(d) and §30 5.125(1) and TPDES Permit Number WQ0013901001, Operational Requirements Number 9 and Other Requirements Number 1, by failing to employ or contract with one or more licensed wastewater treatment facility operators; PENALTY: $7,650; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(18) COMPANY: City of Saint Jo; DOCKET NUMBER: 2015-0215-MWD-E; IDENTIFIER: RN1030 16226; LOCATION: Saint Jo, Montague County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §30 5.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014496001, Monitoring and Reporting Requirements Number 7(c), by failing to report any effluent violation which deviates from the permitted effluent limitation by more than 40% in writing to the TCEQ Abilene Regional Office and the Enforcement Division within five working days of becoming aware of the non-compliance; 30 TAC §§30 5.125(1), 319.9(d), and 319.11(c) and TPDES Permit Number WQ0014496001, Monitoring and Reporting Requirements Number 2(a), by failing to ensure measurements, tests, and calculations are accurately accomplished; 30 TAC §30 5.125(1) and (17) and TPDES Permit Number WQ0014496001, Monitoring and Reporting Requirements Number 1, by failing to submit complete effluent monitoring results at the intervals specified in the permit; and TWC, §26.121(a)(1), 30 TAC §30 5.125(1), and TPDES Permit Number WQ0014496001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: $8,502; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(19) COMPANY: City of Scottsville; DOCKET NUMBER: 2016-1312-PWS-E; IDENTIFIER: RN101227619; LOCATION: Scottsville, Harrison County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(e)(4)(B) and Texas Health and Safety Code, §341.033(a), by failing to operate the facility under the direct supervision of a water works operator who holds a minimum of a Class C or higher license; PENALTY: $625; ENFORCEMENT COORDINATOR: James Fisher, (512) 239-2537; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(20) COMPANY: City of Troy; DOCKET NUMBER: 2016-0826-PWS-E; IDENTIFIER: RN101386159; LOCATION: Troy, Bell County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; and 30 TAC §290.117(c)(2)(B), (h), and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed and report the results to the executive director for the January 1, 2015 - December 31, 2015, monitoring period; PENALTY: $345; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(21) COMPANY: CYNDIE PARK 2 WATER SUPPLY CORPORATION; DOCKET NUMBER: 2015-1580-PWS-E; IDENTIFIER: RN101261410; LOCATION: Banquette, Nueces County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j) and Texas Health and Safety Code, §341.0351, by failing to notify the executive director and obtain approval prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.42(e)(3), by failing to select and install disinfection equipment for the groundwater supply to ensure that continuous and effective disinfection can be secured under all conditions; 30 TAC §290.42(l), by failing to maintain an up-to-date plant operations manual for operator review and reference; 30 TAC §290.43(d)(2), by failing to provide all pressure tanks with a pressure release device and an easily readable pressure gauge; 30 TAC §290.44(a)(4), by failing to install water transmission and distribution lines below the frost line and in one case less than 24 inches below the ground surface; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations in the distribution system at least once every seven days; 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.42(j), by failing to use American National Standards Institute/National Sanitation Foundation Standard 60 certified chemicals in the treatment of water supplied by the facility; and 30 TAC §291.76 and TWC, §5.702, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 12100 for calendar years 2011 - 2014; PENALTY: $982; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(22) COMPANY: Dupre Logistics LLC; DOCKET NUMBER: 2016-1390-PST-E; IDENTIFIER: RN100648096; LOCATION: Channelview, Harris County; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to not deposit a regulated substance into a regulated underground storage tank system that was not covered by a valid, current TCEQ delivery certificate; PENALTY: $1,985; ENFORCEMENT COORDINATOR: Jessica Bland, (512) 239-4967; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(23) COMPANY: East Texas Convenience, LLC dba Villager Grocery; DOCKET NUMBER: 2016-1446-PST-E; IDENTIFIER: RN101790145; LOCATION: Pittsburg, Camp County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month; PENALTY: $3,563; ENFORCEMENT COORDINATOR: Jessica Bland, (512) 239-4967; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(24) COMPANY: ESCONDIDO LAND COMPANY, INCORPORATED; DOCKET NUMBER: 2016-1115-PWS-E; IDENTIFIER: RN101249597; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of ten milligrams per liter for nitrate; PENALTY: $660; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(25) COMPANY: EXXON EZ Incorporated dba Texas Best Smokehouse IV; DOCKET NUMBER: 2016-1455-PST-E; IDENTIFIER: RN105661532; LOCATION: Midlothian, Ellis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1),

by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: $4,875; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 230 9 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: GRAND CASTLE WATER SUPPLY CORPORATION; DOCKET NUMBER: 2016-0459-PWS-E; IDENTIFIER: RN101181550; LOCATION: Plainview, Hale County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; and 30 TAC §290.46(j), by failing to complete a customer service inspection certificate prior to providing continuous service to new construction or any existing service when the water purveyor has reason to believe that cross connections or other potential contamination hazards exist; PENALTY: $250; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(27) COMPANY: Jesus Chiquito; DOCKET NUMBER: 2016-1597-WOC-E; IDENTIFIER: RN106495948; LOCATION: Heath, Rockwall County; TYPE OF FACILITY: on-site sewage facility; RULE VIOLATED: 30 TAC §30 .5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: John P. Seymour dba Special Waste Management; DOCKET NUMBER: 2016-1083-MSW-E; IDENTIFIER: RN105929731; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: medical waste transport; RULE VIOLATED: 30 TAC §326.53(a) and (b) [formerly cited as 30 TAC §330 .9(a) and (l) and §330 .1211(b)], by failing to timely renew a previously issued registration prior to transporting medical waste; PENALTY: $3,603; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(29) COMPANY: JUBLIE, INCORPORATED dba Murphy Food Store; DOCKET NUMBER: 2016-1095-PST-E; IDENTIFIER: RN101911949; LOCATION: Missouri City, Fort Bend County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.51(a)(6) and TWC, §26.3475(c)(2), by failing to ensure that all spill and overfill prevention devices are maintained in good operating condition; 30 TAC §334.50(d)(1)(B)(ii) and TWC, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records at least once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow through for the month plus 130 gallons; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of regulated substance within 30 days of discovery; PENALTY: $10,295; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(30) COMPANY: Marvin E. Tillman; DOCKET NUMBER: 2016-1670-WOC-E; IDENTIFIER: RN103389797; LOCATION: Olton, Lamb County; TYPE OF FACILITY: municipal solid waste disposal site; RULE VIOLATED: 30 TAC §30 .5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(31) COMPANY: Monarch Utilities I L.P.; DOCKET NUMBER: 2016-0866-PWS-E; IDENTIFIER: RN101376200; LOCATION: Joshua, Johnson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(f)(1)(A) and §290.122(a)(2)(D) and (f) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level (MCL) for microbial contaminants for the month of March 2016, and failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to comply with the acute MCL for microbial contaminants for the month of March 2016; PENALTY: $1,205; ENFORCEMENT COORDINATOR: Sarah Kim, (512) 239-4728; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(32) COMPANY: Monarch Utilities I L.P.; DOCKET NUMBER: 2016-1048-MWD-E; IDENTIFIER: RN1030 15350; LOCATION: Point Blank, San Jacinto County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §30 5.126(a) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014056001, Operational Requirements Number 8(a), by failing to obtain necessary authorization from the TCEQ to commence construction of additional treatment and/or collection facilities when the facility reached 90% of the permitted daily average flow for three consecutive months; and TWC, §26.121(a)(1), 30 TAC §30 5.125(1), and TPDES Permit Number WQ0014056001, Permit Conditions Number 2(g), by failing to prevent the discharge of wastewater into or adjacent to water in the state; PENALTY: $2,463; ENFORCEMENT COORDINATOR: Melissa Castro, (512) 239-0855; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(33) COMPANY: Raj-Kally Corporation dba Cowboy Food Mart; DOCKET NUMBER: 2016-1181-PST-E; IDENTIFIER: RN105001580; LOCATION: Walnut Springs, Bosque County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(34) COMPANY: Raj-Kally Corporation dba Pack and Save; DOCKET NUMBER: 2016-1173-PST-E; IDENTIFIER: RN102242427; LOCATION: Walnut Springs, Bosque County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: $4,125; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(35) COMPANY: Ray Faris, Incorporated; DOCKET NUMBER: 2016-1807-WR-E; IDENTIFIER: RN109415661; LOCATION: Bandera, Bandera County; TYPE OF FACILITY: roadside park on Medina River; RULES VIOLATED: TWC, §11.081 and §11.121, by failing to obtain authorization prior to impounding, diverting, or using state water; PENALTY: $350; ENFORCEMENT COORDINATOR: Sandra Douglas, (512) 239-2549; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(36) COMPANY: River Bottom Sand LLC; DOCKET NUMBER: 2016-0867-WQ-E; IDENTIFIER: RN109145607; LOCATION: Lake Jackson, Brazoria County; TYPE OF FACILITY: aggregate production operation (APO); RULES VIOLATED: 30 TAC §342.25(b), by failing to register the site as an APO no later than the tenth business day before

the beginning date of regulated activities; 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with industrial activities under Texas Pollutant Discharge Elimination System General Permit Number TXR050000; and TWC, §26.121(a)(2), by failing to prevent the unauthorized discharge of sediment into or adjacent to water in the state; PENALTY: $8,751; ENFORCEMENT COORDINATOR: Ross Luedtke, (512) 239-3157; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(37) COMPANY: Ross Midland LLC dba Avion Flight Centre South Fuel Farm; DOCKET NUMBER: 2016-1042-PST-E; IDENTIFIER: RN101821684; LOCATION: Midland, Midland County; TYPE OF FACILITY: aircraft refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: $6,750; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(38) COMPANY: Star Container Company Incorporated; DOCKET NUMBER: 2016-1084-MLM-E; IDENTIFIER: RN105726475; LOCATION: Mason, Mason County; TYPE OF FACILITY: plastic regrind facility; RULES VIOLATED: 30 TAC §§335.62, 335.503, and 335.504 and 40 Code of Federal Regulations §262.11, by failing to conduct hazardous waste determinations and waste classifications; 30 TAC §335.4 and TWC, §26.121(a)(1), by failing to not cause, suffer, allow, or permit the unauthorized disposal of industrial solid waste at the facility; and 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization to construct and operate a source of air emissions; PENALTY: $8,313; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(39) COMPANY: Tary Tam dba A-Ya Ya Food Mart; DOCKET NUMBER: 2016-0844-PST-E; IDENTIFIER: RN102246857; LOCATION: Marshall, Harrison County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $5,124; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(40) COMPANY: Texas Department of Criminal Justice; DOCKET NUMBER: 2016-1024-MWD-E; IDENTIFIER: RN102314069; LOCATION: Angelton, Brazoria County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §30 5.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010829001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $3,675; Supplemental Environmental Project offset amount of $2,940; ENFORCEMENT COORDINATOR: Caleb Olson, (512) 239-2541; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(41) COMPANY: The Lubrizol Corporation; DOCKET NUMBER: 2016-0734-AIR-E; IDENTIFIER: RN100221589; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O1929, Special Terms and Conditions Number 11, and New Source Review Permit Number 19804, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: $13,125; Supplemental Environmental Project offset amount of $5,250; ENFORCEMENT COORDINATOR: Shelby Orme, (512) 239-4575; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(42) COMPANY: The Salvation Army; DOCKET NUMBER: 2016-1141-MWD-E; IDENTIFIER: RN102769098; LOCATION: Midlothian, Ellis County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §30 5.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013904001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; and 30 TAC §§30 5.125(1), (11)(A), and (17), 319.1, 319.4, and 319.5(b) and TPDES Permit Number WQ0013904001, Monitoring and Reporting Requirements Numbers 1 and 3(a), by failing to collect and analyze samples at the intervals specified in the permit; PENALTY: $23,250; ENFORCEMENT COORDINATOR: Caleb Olson, (512) 239-2541; REGIONAL OFFICE: 230 9 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(43) COMPANY: Town of Refugio; DOCKET NUMBER: 2014-1043-MWD-E; IDENTIFIER: RN103913935; LOCATION: Refugio, Refugio County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §30 5.125(1) and §319.7(a)(1) - (3) and (5) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010255001, Monitoring and Reporting Requirements Numbers 3.b and 3.c, by failing to maintain complete and accurate records of monitoring activities; 30 TAC §30 5.125(1) and (9)(A) and TPDES Permit Number WQ0010255001, Monitoring and Reporting Requirements Number 7.c, by failing to report any effluent violation which deviates from the permitted limitation by more than 40% in writing to the Corpus Christi Regional Office and the Enforcement Division within five working days of becoming aware of the non-compliance events; 30 TAC §30 5.125(1) and §319.11(c), 40 Code of Federal Regulations (CFR) Part 136, and TPDES Permit Number WQ0010255001, Monitoring and Reporting Requirements Number 2.a, by failing to analyze effluent samples as specified in the permit; 30 TAC §30 5.125(1) and (17) and TPDES Permit Number WQ0010255001, Other Requirements Number 10, by failing to submit a complete quarterly sludge report by the 15th day of the month following each quarter; 30 TAC §30 5.125(1) and (17) and TPDES Permit Number WQ0010255001, Sludge Provisions Section II.F, by failing to submit a complete annual sludge report for the monitoring period ending August 31, 2013, by September 30, 2013; 30 TAC §30 5.125(1) and §319.11(b) and TPDES Permit Number WQ0010255001, Monitoring and Reporting Requirements Number 2.a, by failing to properly preserve effluent samples; 30 TAC §§30 5.125(1) and (11)(A), 319.1, 319.4, and 319.5(b) and TPDES Permit Number WQ0010255001, Effluent Limitations and Monitoring Requirements Number 6 and Monitoring and Reporting Requirements Number 1, by failing to collect and analyze samples at the required frequency; 30 TAC §30 5.125(1) and TPDES Permit Number WQ0010255001, Operational Requirements Number 9 and Other Requirements Number 1, by failing to employ or contract with one or more licensed wastewater treatment facility operators; 30 TAC §30 5.125(1) and §319.5(b) and TPDES Permit Number WQ0010255001, Monitoring and Reporting Requirements Numbers 1 and 3.a, by failing to submit accurate effluent results to the TCEQ; TWC, §26.121(a)(1), 30 TAC §30 5.125(1) and (4), and TPDES Permit Number WQ0010255001, Permit Conditions Number 2.d and Effluent Limitations and Monitoring Requirements Number 4, by failing to take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting human health or the environment; TWC, §26.121(a)(1), 30 TAC §30 5.125(1) and (5), and

TPDES Permit Number WQ0010255001, Operational Requirements Number 1 and Permit Conditions Number 2.g, by failing to properly operate and maintain the facility and all of its systems of collection, treatment, and disposal which resulted in an unauthorized discharge of wastewater; 30 TAC §30 5.125(1) and TPDES Permit Number WQ0010255001, Other Requirements Number 7, by failing to conduct the annual soil sampling from the Class B sludge application area and submit the results with a map showing the location of the soil samples to the TCEQ Corpus Christi Regional Office, Water Quality Assessment Team, and the Compliance Monitoring Team by September 30, 2014; and 30 TAC §30 5.125(1) and §319.11 and TPDES Permit Number WQ0010255001, Monitoring and Reporting Requirements Numbers 1 and 2.a, by failing to monitor effluent as specified in the permit; PENALTY: $104,400; Supplemental Environmental Project offset amount of $104,400; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(44) COMPANY: U.S. Venture, Incorporated; DOCKET NUMBER: 2016-0901-AIR-E; IDENTIFIER: RN100219260; LOCATION: Houston, Harris County; TYPE OF FACILITY: storage and distribution terminal; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit Number O3376, General Terms and Conditions, and Texas Health and Safety Code, §382.085(b), by failing to submit a Permit Compliance Certification within 30 days of the end of the certification period; PENALTY: $2,626; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201605536
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 25, 2016

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Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is December 5, 2016. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on December 5, 2016. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

COMPANY: The Premcor Refining Group Incorporated; DOCKET NUMBER: 2013-0839-AIR-E; IDENTIFIER: RN102584026; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.715(a) and (c)(7), and 122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Federal Operating Permit (FOP) Number O1498, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Numbers 1.A. and 18, and Flexible Permit Numbers 6825A, PSDTX49, and N65, Special Conditions (SC) Number 5A, by failing to prevent unauthorized emissions; 30 TAC §§101.20(3), 116.715(a) and (c)(7), and 122.143(4), THSC, §382.085(b), FOP Number O2229, GTC and STC Number 15.A., Flexible Permit Numbers 6825A, PSDTX49, and N65, SC Number 5A, by failing to prevent unauthorized emissions; 30 TAC §§101.20(2) and (3), 113.780, 116.715(a) and (c)(7), and 122.143(4), THSC, §382.085(b), 40 Code of Federal Regulations §63.1568(a)(1), FOP Number O1498, GTC, and Flexible Permit Numbers 6825A, PSDTX49, and N65, SC Numbers 3A, 5A, 5B, 7B, and 23B, by failing to prevent unauthorized emissions and maintain the sulfur dioxide and hydrogen sulfide concentrations below the maximum allowable limits; 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), FOP Number O1498, STC Number 18, and Flexible Permit Number 56546, SC Number 5A, by failing to comply with the volatile organic compounds emission rates; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), THSC, §382.085(b), FOP Number O2227, GTC and STC Number 16, and Flexible Permit Numbers 6825A, PSDTX49, and N65, SC Number 11A, by failing to comply with the allowable rolling 12-month loading throughput rates; 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), THSC, §382.085(b), FOP Number O1498, GTC and STC Numbers 1.A. and 18, and Flexible Permit Numbers 6825A, PSDTX49, and N65, SC Number 1, by failing to prevent unauthorized emissions; 30 TAC §106.4(c) and §122.143(4), THSC, §382.085(b), and FOP Number O2228, GTC and STC Numbers 1.A. and 15, by failing to prevent unauthorized emissions; 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), THSC, §382.085(b), FOP Number O1498, GTC and STC Numbers 1.A. and 18, and Flexible Permit Numbers 6825A, PSDTX49, and N65, SC Number 1, by failing to prevent unauthorized emissions; and 30 TAC §106.4(c) and §122.143(4), THSC, §382.085(b), and FOP Number O2228, GTC and STC Numbers 1.A. and 15, by failing to prevent unauthorized emissions; PENALTY: $348,938; Supplemental Environmental Project offset amount of $139,575; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

COMPANY: The Premcor Refining Group Incorporated; DOCKET NUMBER: 2011-2300-AIR-E; IDENTIFIER: RN102584026; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Federal Operating Permit (FOP) Number O1498, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Numbers 1.A. and 18, and Flexible Permit Numbers 6825A, PSDTX49, and N65, Special Conditions (SC) Number 1, by failing to prevent unauthorized emissions; 30 TAC §101.201(a)(1)(B) and §122.143(4), THSC, §382.085(b), and FOP Number O1498, GTC and STC Number 2.F., by failing to submit an initial notification within 24 hours after discovery of the emissions event; and 30 TAC

§116.115(b)(2)(F) and (c) and §122.143(4), THSC, §382.085(b), FOP Number O1498, GTC and STC Numbers 1.A. and 18, and Flexible Permit Number 86757, SC Number 1, by failing to comply with the permitted nitrogen oxide emission rate of 3.3 pounds per hour; PENALTY: $2,020,216; Supplemental Environmental Project offset amount of $1,010,108; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201605605
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 27, 2016

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Combined Notice of Public Meeting and Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater Renewal Permit Number WQ0011593001

APPLICATION AND PRELIMINARY DECISION. Trophy Club Municipal Utility District No. 1, 100 Municipal Drive, Trophy Club, Texas 76262, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0011593001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,750,000 gallons per day. The draft permit also authorizes the disposal of treated domestic wastewater via irrigation of 416.9 acres of golf course. TCEQ received this application on March 1, 2016.

The facility is located at 1499 Junction Way, approximately 0.9 mile north of the intersection of State Highway 114 and Trophy Club Drive, and approximately 2.5 miles east of the intersection of U.S. Highway 377 and State Highway 114 in Denton County, Texas 76262. The treated effluent is discharged to unnamed ponds (golf course ponds) and/or an unnamed tributary; thence to Marshall Branch; thence to Grapevine Lake in Segment No. 0826 of the Trinity River Basin. The unclassified receiving water use is minimal aquatic life use for the unnamed tributary (and golf course ponds) and for Marshall Branch. The designated uses for Segment No. 0826 are high aquatic life use, public water supply, and primary contact recreation.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Trophy Club Municipal Utility District Svore Building, 100 Municipal Drive, Trophy Club, Texas. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application. https://www.tceq.texas.gov/assets/public/hb610/index.html?lat=33.005833&lng=-97.183333&zoom=13&type=r.

CHANGE IN LAW: The Texas Legislature enacted Senate Bill 709, effective September 1, 2015, amending the requirements for comments and contested case hearings. This application is subject to those changes in law.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments about this application. The TCEQ will hold a public meeting on this application because it was requested by a local legislator. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application.

The public meeting will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application, and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requests to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Tuesday, December 6, 2016 at 7:00 P.M.

Trophy Club Municipal Utility District No. 1

Svore Municipal Building (Boardroom)

100 Municipal Drive

Trophy Club, Texas 76262

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. **Unless the application is directly referred for a contested case hearing, the response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision.** A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and proposed permit number; the location and distance of your property/activities relative to the proposed facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for

reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn. **If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law relating to relevant and material water quality concerns submitted during the comment period. TCEQ may act on an application to renew a permit for discharge of wastewater without providing an opportunity for a contested case hearing if certain criteria are met.**

EXECUTIVE DIRECTOR ACTION. The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Citizens are encouraged to submit written public comments and public meeting requests to the Office of the Chief Clerk, MC 105, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/about/comments.html within 30 days from the date of newspaper publication of this notice or by the date of the public meeting, whichever is later.

AGENCY CONTACTS AND INFORMATION. If you need more information about this permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov.

Further information may also be obtained from CP&Y at 115 W. 7th St #1500, Fort Worth, Texas 76102 or by calling Kevin Glovier, PE at (817) 354-0189.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or 1-800-RELAY-TX (TDD) at least one week prior to the meeting.

Issuance Date October 21, 2016

TRD-201605577
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 26, 2016

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Enforcement Orders

An agreed order was adopted regarding Texas A&M AgriLife Research, Docket No. 2015-0778-IWD-E on October 25, 2016 assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Robert M. Smith and OAK TERRACE ESTATES, INC., Docket No. 2015-1108-PWS-E on October 25, 2016 assessing $740 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aaina Enterprises Inc. dba Easy Shop, Docket No. 2015-1387-PST-E on October 25, 2016 assessing $3,879 in administrative penalties with $775 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Texas Concrete Enterprise, L.L.C., Docket No. 2015-1771-WQ-E on October 25, 2016 assessing $1,370 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ian Groetsch, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Jonah Water Special Utility District, Docket No. 2016-0138-PWS-E on October 25, 2016 assessing $345 in administrative penalties with $69 deferred. Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding HENRY & SONS CONSTRUCTION COMPANY, INC., Docket No. 2016-0409-MSW-E on October 25, 2016 assessing $787 in administrative penalties with $157 deferred. Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Pioneer Natural Resources USA, Inc., Docket No. 2016-0513-PWS-E on October 25, 2016 assessing $250 in administrative penalties with $50 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Anita Lewis and Cody Brent Lewis, Docket No. 2016-0550-PWS-E on October 25, 2016 assessing $262 in administrative penalties with $52 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Jarvis Christian College, Docket No. 2016-0566-MWD-E on October 25, 2016 assessing $3,050 in administrative penalties with $610 deferred. Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711 3087.

An agreed order was adopted regarding NORTH ORANGE WATER & SEWER, LLC, Docket No. 2016 0573 PWS E on October 25, 2016

assessing $1,821 in administrative penalties with $364 deferred. Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (512) 239 2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Fort Bend County Municipal Utility District No. 37, Docket No. 2016-0651-MWD-E on October 25, 2016 assessing $2,750 in administrative penalties with $550 deferred. Information concerning any aspect of this order may be obtained by contacting Melissa Castro, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lumberton Municipal Utility District, Docket No. 2016-0664-MWD-E on October 25, 2016 assessing $4,125 in administrative penalties with $825 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TICONA POLYMERS, INC., Docket No. 2016-0725-WDW-E on October 25, 2016 assessing $2,438 in administrative penalties with $487 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201605592
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 26, 2016

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Notice of District Petition

Notices issued October 21-24, 2016

Texas Commission on Environmental Quality (TCEQ) Internal Control No. D-06142016-043; CE Development, Inc. (Petitioner) filed a petition for creation of Travis County Municipal Utility District No. 23 (District) with the TCEQ. The petition was filed pursuant to Article XVI, Section 59 of the Texas Constitution; Chapters 49 and 54 of the Texas Water Code; Title 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are three lienholders, 130 Cactus Investment, L.P., ARP Autumn Ridge Partners, LP, and International Bank of Commerce, on the property to be included in the proposed District; (3) the proposed District will contain approximately 443.692 acres located within Travis County, Texas; and (4) all of the land within the proposed District is within the corporate limits of the City of Pflugerville (City), Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. The Petitioner has also provided certificates evidencing the consent of the lienholders to the creation of the proposed District. By Resolution No. 1475-16-02-09-0296, passed and approved February 9, 2016, the City of Pflugerville, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner, from such information available at this time, that the cost of said project will be approximately $53,025,000 ($44,375,000 for utilities, plus $4,325,000 for recreational facilities, plus $4,325,000 for road facilities).

TCEQ Internal Control No. D-07132016-015; 278 Georgetown, Inc. (Petitioner) filed a petition for creation of Williamson County Municipal Utility District No. 34 (District) with the TCEQ. The petition was filed pursuant to Article XVI, § 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are three lienholders, San Gabriel Harvard Limited Partnership, United Development Funding IV, and PlainsCapital Bank on the property to be included in the proposed District; and the before mentioned entities have consented to the petition; (3) the proposed District will contain approximately 278.21 acres located within Williamson County, Texas; and (4) the proposed District is within the corporate boundaries of the City of Georgetown, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 052416-I, passed and approved May 24, 2016, the City of Georgetown gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner, from the information available at this time, that the cost of said project will be approximately $19,925,000 ($16,250,000 for utilities plus $525,000 for roads plus $3,150,000 for recreational facilities).

TCEQ Internal Control No. D-07222016-052; The Jack W. Wilson Family Trust, The Sarah H. Wilson Grantor Trust "A", The Tiffany Nicole Harrison Howe Trust, The Angela Glover Trust, The John Paul Wilson Trust, The Rosemary Harrison Children's Trust, The Sarah H. Wilson Grantor Trust "B", Angela Christine Harrison Glover, and Tiffany Nicole Harrison Howe (Petitioners) filed a petition for creation of Far North Fort Worth Municipal Utility District No. 1 of Tarrant and Wise Counties (District) with the TCEQ. The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners holds title to all of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 719.903 acres located within Tarrant and Wise Counties, Texas; and (4) no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners, from the information available at this time, that the cost of said project will be approximately $56,415,000 ($43,945,000 for utilities plus $12,470,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property

relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

Issued in Austin, Texas on October 25, 2016

TRD-201605595
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 26, 2016

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 9, 2016.** TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711 3087 and must be **received by 5:00 p.m. on December 9, 2016.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: GREEN LAND VENTURES, LTD.; DOCKET NUMBER: 2014-1703-WQ-E; TCEQ ID NUMBER: RN106433766; LOCATION: approximately two miles west of Interstate Highway 10 on the north side of Boerne Stage Road, San Antonio, Bexar County; TYPE OF FACILITY: land development construction site; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water runoff associated with construction activities; and TWC, §26.121(a)(2), by failing to prevent the unauthorized discharge of sediment into or adjacent to water in the state; PENALTY: $4,500; STAFF ATTORNEY: Elizabeth Carroll Harkrider, Litigation Division, MC 175, (512) 239-2008; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Town of Addison; DOCKET NUMBER: 2015-0549-WR-E; TCEQ ID NUMBER: RN105975361; LOCATION: within a municipal development on Ponte Avenue along Vitruvian Trail, Addison, Dallas County; TYPE OF FACILITY: two permitted impoundments; RULES VIOLATED: TWC, §11.121 and 30 TAC §297.11, by failing to obtain authorization prior to beginning construction of any work designed for the storage, taking or diversion of state water; 30 TAC §297.45(e) and TCEQ Water Use Permit Number 5383A, Special Condition 6.C., by failing to maintain a Trinity Aquifer groundwater well as an alternative source of water; TWC, §11.121, 30 TAC §297.45(e), and TCEQ Water Use Permit Number 5383A, Special Condition 6.B., by failing to supplement the reservoirs with water from the groundwater well in the amount of a minimum of 5.82 acre feet of water per year; and 30 TAC §297.45(e) and TCEQ Water Use Permit Number 5383A, Special Condition 6.D., by failing to maintain a riparian buffer zone of permanent native vegetation around the perimeter of the reservoir complex at a density to ensure complete coverage at maturity; PENALTY: $2,355; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201605534
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 25, 2016

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 9, 2016.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper,

inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 9, 2016.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: LASS UTILITY SERVICE COMPANY INC and Sandra R. Barbey; DOCKET NUMBER: 2016-0039-PWS-E; TCEQ ID NUMBER: RN101225753; LOCATION: 0.8 mile south of the intersection of Wolf Lane and State Highway 6 near Valley Mills, McLennan County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the executive director (ED) regarding the failure to submit a Disinfectant Level Quarterly Operating Report by the tenth day following the end of the monitoring period; 30 TAC §290.117(i)(6) and (j), by failing to mail consumer notification of lead tap water monitoring results to persons served at the locations that were sampled and failing to submit to the TCEQ a copy of the consumer notification and certification that the consumer notification has been distributed to persons served at the locations that were sampled in a manner consistent with TCEQ requirements; 30 TAC §290.117(c)(2)(A)(i) and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed by an approved laboratory, and provide the results to the ED following the end of the monitoring period, and by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples; 30 TAC §290.117(c)(2)(A)(i) and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed by an approved laboratory, and provide the results to the ED within ten days following the end of the monitoring period; PENALTY: $2,447; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Randall & Spencer, LLC d/b/a 2 Cousins Gas & Grocery; DOCKET NUMBER: 2015-1747-PWS-E; TCEQ ID NUMBER: RN106852346; LOCATION: 7700 Farm-to-Market Road 2210 East, Perrin, Jack County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.033(d) and 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(A) and (f), by failing to collect routine distribution water samples for coliform analysis for the months of February through August 2015 and by failing to issue public notification and submit a copy of the public notification to the executive director regarding the failure to collect routine samples for the months of February through June 2015; PENALTY: $1,815; STAFF ATTORNEY: Adam Taylor, Litigation Division, MC 175, (512) 239-3345; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(3) COMPANY: Waylon Ray Collins; DOCKET NUMBER: 2015-1257-PST-E; TCEQ ID NUMBER: RN102717493; LOCATION: 306 West South 1st Street, Roby, Fisher County; TYPE OF FACILITY: inactive underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.55 and TCEQ AO Docket Number 2010-0597-PST-E, Ordering Provisions Numbers 2.a. and 3., by failing to permanently remove a UST system from service; and TWC, §5.702, 30 TAC §334.22(a), and TCEQ AO Docket Number 2010-0597-PST-E, Ordering Provision Number 2.b., by failing to pay outstanding UST fees and late fees for TCEQ Financial Administration Account Number 0033911U; PENALTY: $57,375; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

TRD-201605535
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 25, 2016

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Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, Agency, or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations, the proposed penalty, the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 9, 2016.** The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 9, 2016.**

Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing.**

(1) COMPANY: BENTON RAINEY, INC. d/b/a East End Station; DOCKET NUMBER: 2016-0595-PST-E; TCEQ ID NUMBER: RN101833663; LOCATION: 1609 East Main Street, Clarksville, Red River County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $4,500; STAFF ATTORNEY: Isaac Ta, Litigation Division, MC 175, (512) 239-0683; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: SEAROSE INC d/b/a Discount Mart 3; DOCKET NUMBER: 2016-0551-PST-E; TCEQ ID NUMBER: RN101769651; LOCATION: 3400 College Avenue, Snyder, Scurry County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; and 30 TAC §334.602(a), by failing to designate, train, and certify at least one individual for each class of operator - Class A, B, and C - for the facility; PENALTY: $6,378; STAFF ATTORNEY: Isaac Ta, Litigation Division, MC 175, (512) 239-0683; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

TRD-201605533
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 25, 2016

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Notice of Public Meeting for a New Hazardous Waste Landfill Facility Permit Application Number 50407

APPLICATION. Altair Disposal Services, LLC has applied to Texas Commission on Environmental Quality (TCEQ) for a hazardous waste permit to authorize the construction and operation of a new non-commercial landfill for the disposal of hazardous waste and industrial solid waste. The facility is proposed to be located at 5464 Highway 71, Lot B, Altair, Colorado County, Texas 77412. TCEQ received the application on October 22, 2013. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.59999&lng=-96.492&zoom=13&type=r For exact location, refer to application.

EXECUTIVE DIRECTOR ACTION. The TCEQ Executive Director has completed a technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

PUBLIC COMMENT/PUBLIC MEETING. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Response will be provided orally during the Informal Discussion Period. During the Formal Discussion Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all relevant and material formal comments received before the close of the public comment period will be prepared by the Executive Director. A copy of the written response will be sent to each person who submits a formal comment or a request to be added to the mailing list for this permit application and provides a mailing address. All timely formal comments will be considered before a decision is reached on the permit application. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application. The public comment period for this application has been extended until the close of the public meeting.

The Public Meeting is to be held:

Thursday, December 1, 2016, at 7:00 P.M.

Columbus High School Auditorium

102 Cardinal Street

Columbus, Texas 78934

INFORMATION. Citizens are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/about/comments.html. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Web site at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Nesbitt Memorial Library, 529 Washington Street, Columbus, Colorado County, Texas 78934. Additional information may be obtained from Altair Disposal Services, LLC at the above address or by calling Mr. David Nielsen at (661) 762-6233.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Mailed Date: October 20, 2016

TRD-201605575
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 26, 2016

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Notice of Water Quality Application

The following notice was issued on October 20, 2016.

The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

CITY OF HOUSTON has applied for a minor amendment to Texas Pollutant Discharge Elimination System Permit No. WQ0010495142 to authorize an Interim phase to discharge treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located at 26808 Sorters Road, approximately 250 feet south of River Ridge Drive and 0.75 mile west of U.S. Highway 59, in Montgomery County, Texas 77365.

Issued in Austin, Texas on October 25, 2016

TRD-201605593
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 26, 2016

♦ ♦ ♦

Notice of Water Rights Application

Notice issued October 24, 2016

APPLICATION NO. 13105; BP America Production Company, 886 Finklea Rd. P.O Box 959 Hallsville, Texas 75650, Applicant, seeks a Temporary Water Use Permit to divert and use not to exceed 225 acre-feet of water within a period of three years from Francis Lake on an unnamed tributary of Caney Creek, Cypress Creek Basin for mining purposes in Harrison County. The application and fees were received on February 18, 2014. Additional information and fees were received on July 23, October 21, October 23, and October 28, 2014. The application was declared administratively complete and filed with the Office of the Chief Clerk on December 8, 2014. The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would contain special conditions including, but not limited to, requiring the Applicant to install and maintain a measuring device which accounts for, within 5% accuracy, the quantity of water diverted from the point authorized. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F., Austin, TX 78753. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by November 14, 2016.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement (I/we) request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

Issued in Austin, Texas on October 25, 2016

TRD-201605594
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 26, 2016

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Proposal for Decision

The State Office of Administrative Hearings (SOAH) issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality (TCEQ) on October 18, 2016, in the matter of the Executive Director of the Texas Commission on Environmental Quality v. Harrison County; SOAH Docket No. 582-16-2617; TCEQ Docket No. 2015-1297-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Harrison County on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Mehgan Taack, Office of the Chief Clerk, (512) 239-3300.

TRD-201605596
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 26, 2016

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Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission of names of filers who did not file a report or failed to pay penalty fines for late reports in

reference to the listed filing deadline. If you have any questions, you may contact Michelle Gonzales at (512) 463-5800.

Deadline: Semiannual Report due July 15, 2015, for Candidates and Officeholders

Lee C. Crisp, 6920 Fall Creek Hwy., Granbury, Texas 76049

Deadline: Semiannual Report due July 15, 2016, for Candidates and Officeholders

Andrew J. Condi, P.O. Box 894, Cuero, Texas 77954

Sandra Crenshaw, 2018 Lanark Ave., Dallas, Texas 75203-4525

Philip B. Hayes, 1728 Barbara Ct., Hideaway, Texas 75771

Cristoban Hernandez, 12053 Champion Forest Dr., Houston, Texas 77066

Heather M. Mather, 401 Congress Ave., Ste. 1540, Austin, Texas 78701

Marilynn S. Mayse, 4306 York St., Dallas, Texas 75210

James D. Morrison, 64 Cauthen Dr., Huntsville, Texas 77320

Ruby Resendez, 4107 Medical Dr., Unit 4108, San Antonio, Texas 78229

Stephen A. Simonsen, 220 N. Thompson, Ste. 101, Conroe, Texas 77301

Demetria Smith, 15155 Richmond Ave., Ste 1410, Houston, Texas 77082

Deadline: Monthly Report due July 5, 2016, for Committees

Erasmo Herrera III, I.L.A. Local #20 PAC Fund, 2301 33rd St., Galveston, Texas 77550

Deadline: Semiannual Report due July 15, 2016, for Committees

Stephanie C. Schnaible, Focus On The Kids PAC, 323 Silver Canyon Dr., Fort Worth, Texas 76108

Deadline: Personal Financial Statement Report due May 2, 2016

Carla S. Hoffman, 6468 Holly Road, Corpus Christi, Texas 78412-4842

TRD-201605471
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Filed: October 20, 2016

♦ ♦ ♦

Texas Facilities Commission

Request for Proposals #303-8-20583

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Insurance-Division of Workers' Compensation (TDI), announces the issuance of Request for Proposals (RFP) #303-8-20583. TFC seeks a five (5) or ten (10) year lease of approximately 12,272 square feet of office space in San Antonio, Bexar County, Texas.

The deadline for questions is November 14, 2016 and the deadline for proposals is November 23, 2016 at 3:00 P.M. The award date is December 21, 2016. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=127797.

TRD-201605467
Kay Molina
General Counsel
Texas Facilities Commission
Filed: October 19, 2016

♦ ♦ ♦

Texas Health and Human Services Commission

Public Notice - Long-Term Care Plan for Individuals with Intellectual Disabilities and Related Conditions 2016-2017

The Texas Health and Human Services Commission (HHSC), pursuant to §533A.062 of the Texas Health and Safety Code, approves and publishes this final Long-Term Care (LTC) Plan. The LTC Plan reflects the legislative appropriations request (LAR) that portion of the Department of Aging and Disability Services, which as of September 1, 2016, is made part of HHSC. This final LTC Plan reflects the LAR for state fiscal years 2016-17.

The purpose of the LTC Plan is to ensure that persons are enrolled in institutional and waiver services as intended by appropriations and to provide a plan for achieving this goal. Consistent with state law, the preliminary LTC Plan was finalized with appropriations authorized by the 84th Texas Legislature. The final LTC Plan includes information on the following:

State supported living centers (SSLCs);

Community-based intermediate care facilities for individuals with an intellectual disability or related condition (ICF/IIDs);

Home and Community-based Services (HCS) waiver;

Texas Home Living (TxHmL) waiver;

Community Living Assistance and Support Services (CLASS) waiver; and

Deaf Blind with Multiple Disabilities (DBMD) waiver.

An individual may obtain a copy of the Long-Term Care Plan (LTC) for Individuals with Intellectual Disabilities and Related Conditions 2016-17, by contacting Janet Fletcher by U.S. mail, telephone, fax, or email. The addresses are as follows:

U.S. Mail

Texas Health and Human Services Commission

Attention: Janet Fletcher, Department of Aging and Disability Services (DADS)

701 W. 51st Street

MC W551

Austin, Texas 78751

Telephone

(512) 438-4350

Email:

Janet.fletcher@HHSC.state.tx.us

TRD-201605597

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 26, 2016

♦ ♦ ♦

Texas Department of Housing and Community Affairs

Notice of Public Hearing - Multifamily Housing Revenue Bonds (Arborstone Apartments)

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at the Hampton-Illinois Branch Library, 2951 South Hampton Road, Dallas, Texas 75224 at 1:00 p.m. on November 29, 2016. The hearing is regarding an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $35,500,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Dalcor Arborstone, Ltd., a Texas limited partnership, or a related person or affiliate thereof (the "Borrower"), to finance a portion of the costs of acquiring and rehabilitating a multifamily housing development. The housing development is described as follows: an approximately 536-unit multifamily housing development located at 6500 South Cockrell Hill Road, Dallas, Texas 75236 (the "Development"). Upon the issuance of the Bonds, the Development will be owned by the Borrower.

This hearing replaces the hearing originally scheduled for October 25, 2016, which was cancelled.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Shannon Roth at the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941; (512) 475-3929; and/or shannon.roth@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Shannon Roth in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Shannon Roth prior to the date scheduled for the hearing. Individuals who require a language interpreter for the public hearing should contact Elena Peinado at (512) 475-3814 at least five days prior to the hearing date so that appropriate arrangements can be made. Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado al siguiente número (512) 475-3814 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this hearing should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least five days before the hearing so that appropriate arrangements can be made.

This notice is published and the hearing is to be held in satisfaction of the requirements of §147(f) of the Internal Revenue Code of 1986, as amended.

http://www.tdhca.state.tx.us/multifamily/communities.htm

TRD-201605551
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 25, 2016

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by INFINITY SECURITY INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Birmingham, Alabama.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of publication in the *Texas Register,* addressed to the attention of Jeff Hunt, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201605581
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: October 26, 2016

♦ ♦ ♦

Texas Department of Licensing and Regulation

Correction of Error

The Texas Department of Licensing and Regulation (TDLR) adopted new rules for 16 TAC §§100.1, 100.10, 100.20, 100.30 and 100.40 in the October 21, 2016 issue of the *Texas Register* (41 TexReg 8292). The statutory authority submitted by TDLR for the adopted rules was incorrect. The correct statutory authority should read as follows:

"The new rules are adopted under Texas Occupations Code, Chapters 51, 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 451 (Athletic Trainers); 605 (Orthotists and Prosthetists); and 701 (Dietitians), which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 451 (Athletic Trainers); 605 (Orthotists and Prosthetists); and 701 (Dietitians). No other statutes, articles, or codes are affected by the proposal."

TRD-201605538

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Notice of a Vacancy on Air Conditioning and Refrigeration Contractors Advisory Board

The Texas Department of Licensing and Regulation (Department) announces a vacancy on the Air Conditioning and Refrigeration Contractors Advisory Board (Board) established by Texas Occupations Code, Chapter 1302, Subchapter E. The pertinent rules may be found in 16 Texas Administrative Code §75.65. The purpose of the Air Conditioning and Refrigeration Contractors Advisory Board is to advise the Texas Commission of Licensing and Regulation (Commission)in adopting rules, administering and enforcing this chapter, and setting fees. This announcement is for one member who holds a Class A license and practices in a municipality with a population of more than 25,000 but not more than 250,000.

The Board is composed of the following nine members appointed by the presiding officer of the Commission, with the Commission's approval:

(1) one official of a municipality with a population of more than 250,000;

(2) one official of a municipality with a population of not more than 250,000;

(3) five full-time licensed air conditioning and refrigeration contractors, as follows: one member who holds a Class A license and practices in a municipality with a population of more than 250,000; one member who holds a Class B license and practices in a municipality with a population of more than 250,000; one member who holds a Class A license and practices in a municipality with a population of more than 25,000 but not more than 250,000; one member who holds a Class B license and practices in a municipality with a population of not more than 25,000; one member who holds a license of any classification under this chapter, is principally engaged in air conditioning and refrigeration contracting, and practices in a municipality;

(4) one must be a building contractor who is principally engaged in home construction and is a member of a statewide building trade association; and

(5) one public member.

At least one appointed Board member must be an air conditioning and refrigeration contractor who employs organized labor. The executive director and the chief administrator of this chapter serve as ex officio, nonvoting members of the Board. Members serve staggered six-year terms with the terms of two appointed members expiring on February 1 of each odd-numbered year.

Interested persons should submit an application on the Department website at: https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx. Applicants can also request an application from the Department by telephone (800) 803-9202 or e-mail advisory.boards@tdlr.texas.gov.

TRD-201605599
Brian Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: October 26, 2016

♦ ♦ ♦

Notice of Vacancy on Towing, Storage and Booting Advisory Board

The Texas Department of Licensing and Regulation (Department) announces two vacancies on the Towing, Storage and Booting Advisory Board (Board) established by Texas Occupations Code, Chapter 2308 and Chapter 2303. The pertinent rules may be found in 16 Texas Administrative Code §85.650 and §86.650. The purpose of the Towing, Storage and Booting Advisory Board is to advise the Texas Commission of Licensing and Regulation (Commission) and the Department on technical matters relevant to the administration and enforcement of Chapter 2308 and Chapter 2303, including examination content, licensing standards, and continuing education requirements. This announcement is for two positions, one for a parking facility owner and the other for a public member.

The Board is composed of the following ten members appointed by the presiding officer of the Commission, with the Commission's approval:

(1) one representative of a towing company operating in a county with a population of less than one million;

(2) one representative of a towing company operating in a county with a population of one million or more;

(3) one owner of a vehicle storage facility located in a county with a population of less than one million;

(4) one owner of a vehicle storage facility located in a county with a population of one million or more;

(5) one parking facility owner;

(6) one law enforcement officer from a county with a population of less than one million;

(7) one law enforcement officer from a county with a population of one million or more;

(8) one representative of property and casualty insurers who write automobile insurance in this state;

(9) one representative of a booting company; and

(10) one public member.

Members serve terms of six years, with the terms of two or three members, as appropriate, expiring on February 1 of each odd-numbered year.

Interested persons should submit an application on the Department website at: https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx. Applicants can also request an application from the Department by telephone (800) 803-9202 or e-mail advisory.boards@tdlr.texas.gov.

Issued in Austin, Texas on October 26, 2016.

TRD-201605600
Brian Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: October 26, 2016

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Notice of Vacancy on Weather Modification Advisory Committee

The Texas Department of Licensing and Regulation (Department) announces a vacancy on the Weather Modification Advisory Committee (Committee) established by Agriculture Code, Title 9, Weather and Climate, Chapter 301. The purpose of the Weather Modification Advisory Committee is to advise the Texas Commission of Licensing and Regulation (Commission) on legislation, policies, administration, research, and other matters related to the duties, powers, or function of the Texas Department of Licensing and Regulation under this chapter. This announcement is for the position of a businessman.

The Committee is composed of five members appointed by the presiding officer of the Commission, with the Commission's approval. The members represent the following professional interests: Businessman; Engineer; Atmospheric Scientist; Attorney; and Agricultural Producer. Members serve at the will of the Commission.

Interested persons should submit an application on the Department website at: https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx. Applicants can also request an application from the Department by telephone (800) 803-9202 or e-mail advisory.boards@tdlr.texas.gov.

TRD-201605601
Brian Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: October 26, 2016

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Public Notice - Criminal Conviction Guidelines

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that, at their regularly scheduled meeting

held October 5, 2016, the Commission adopted amendments to the Texas Department of Licensing and Regulation's (Department's) Criminal Conviction Guidelines pursuant to Texas Occupations Code, §53.025(a). The Criminal Conviction Guidelines are updated from the original guidelines published on December 5, 2003 (28 TexReg 11018) to include the Midwives program.

The Criminal Conviction Guidelines (guidelines) describe the process by which the Department determines whether a criminal conviction renders an applicant an unsuitable candidate for the license, or whether a conviction warrants revocation or suspension of a license previously granted. The guidelines present the general factors that are considered in all cases and the reasons why particular crimes are considered to relate to each type of license issued by the Department.

Senate Bill 202, 84th Legislature, Regular Session (2015), transferred regulation of Midwives from the Department of State Health Services to the Texas Department of Licensing and Regulation and amended Texas Occupations Code, Chapter 203. The statutory changes were effective September 1, 2015; the adopted rules became effective October 1, 2016; and the Department commenced all regulatory functions for the Midwives program on October 3, 2016

The Criminal Conviction Guidelines for the Midwives program will become a part of the overall guidelines that are already in place for other Department programs. The Department presented the applicable guidelines to the Midwives Advisory Board at their meeting on August 17, 2016, and received the Board's recommendation of approval.

The Criminal Conviction Guidelines for the Midwives program are as follows:

Crimes against the person such as homicide, kidnapping and assault.

Reasons:

1. Under Section 203.404(a)(3) of the Texas Occupations Code, the agency may discipline a licensed midwife, refuse to renew a midwife's license or refuse to issue a license to an applicant if the person is convicted of a misdemeanor involving moral turpitude or a felony.

2. Licensees interact with adults and children in a healthcare service provider/client role. Persons who have a history of committing such crimes could pose a danger to the clients.

3. The occupation involves physical contact with clients and their family members in residences and other private settings.

4. This occupation provides persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving prohibited sexual conduct.

Reasons:

1. Under Section 203.404(a)(3) of the Texas Occupations Code, the agency may discipline a licensed midwife, refuse to renew a midwife's license or refuse to issue a license to an applicant if the person is convicted of a misdemeanor involving moral turpitude or a felony.

2. Licensees interact with adults and children in a healthcare service provider/client role. Persons who have a history of committing such crimes could pose a danger to the clients.

3. The occupation involves physical contact with clients and their family members, including children, in residences and other private settings.

4. This occupation provides persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving children as victims.

Reasons:

1. Under Section 203.404(a)(3) of the Texas Occupations Code, the agency may discipline a licensed midwife, refuse to renew a midwife's license or refuse to issue a license to an applicant if the person is convicted of a misdemeanor involving moral turpitude or a felony.

2. Licensees interact with children in a healthcare service provider/client role. Persons who have a history of committing such crimes could pose a danger to the children.

3. The occupation involves physical contact with clients and their family members, including children, in residences and other private settings.

4. This occupation provides persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes against property such as theft or burglary.

Reasons:

1. Under Section 203.404(a)(3) of the Texas Occupations Code, the agency may discipline a licensed midwife, refuse to renew a midwife's license or refuse to issue a license to an applicant if the person is convicted of a misdemeanor involving moral turpitude or a felony.

2. Licensees interact with adults and children in a healthcare service provider/client role. Persons who have a history of committing such crimes could pose a risk to the property of the clients.

3. The occupation involves contact with clients and their family members in residences and other private settings.

4. Licensees have access to the property of clients and others in residences and other private settings.

5. This occupation provides persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving fraud or deceptive trade practices

Reasons:

1. Under Section 203.404(a)(3) of the Texas Occupations Code, the agency may discipline a licensed midwife, refuse to renew a midwife's license, or refuse to issue a license to an applicant if the person is convicted of a misdemeanor involving moral turpitude or a felony.

2. Under Section 203.404(a)(5) of the Texas Occupations Code, the agency may discipline a licensed midwife, refuse to renew a midwife's license, or refuse to issue a license to an applicant if the person engages in unprofessional or dishonorable conduct that may reasonably be determined to deceive or defraud the public.

3. Licensees interact with adults and children in a healthcare service provider/client role. Persons who have a history of committing such crimes could pose a danger to the clients and their property.

4. The occupation involves contact with clients and their family members in residences and other private settings.

5. Licensees have access to the property of clients and others in residences and other private settings.

6. Licensees are directly involved in the filing of birth certificates.

7. This occupation provides persons with this type of criminal history the opportunity to engage in further similar conduct, potentially including healthcare fraud, insurance fraud, and citizenship fraud.

Crimes involving the possession, possession with intent to deliver, possession with intent to distribute, delivery, distribution or manufacture of illegal drugs.

Reasons:

1. Licensees interact with adults and children in a healthcare service provider/client role. Persons who have a history of committing such crimes could pose a danger to the clients.

2. The occupation involves contact with clients and their family members in residences and other private settings.

3. This occupation provides the opportunity for the administration of illegal drugs to clients.

4. This occupation provides persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving being under the influence of alcohol or drugs.

Reasons:

1. Licensees interact with adults and children in a healthcare service provider/client role. Persons who have a history of committing such crimes could pose a danger to the clients.

2. The occupation involves close proximity to and physical contact with clients and their children during the prenatal, birthing, and postpartum periods. Persons with this type of criminal history could potentially have alcohol or drugs in their systems which would make them a danger to their clients or others.

Crimes involving the sale, distribution or disposal of human organs or tissue.

1. Licensees interact with adults and children in a healthcare service provider/client role. Persons who have a history of committing such crimes could pose a danger to the clients.

2. This occupation provides persons with this type of criminal history the opportunity to engage in further similar conduct.

A copy of the complete Criminal Conviction Guidelines is posted on the Department's website and may be obtained at *www.tdlr.texas.gov.* You may also contact the Enforcement Division at (512) 539-5600 or by email at *enforcement@tdlr.texas.gov* to obtain a copy of the complete guidelines.

TRD-201605469
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: October 20, 2016

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Public Notice - Criminal Conviction Guidelines

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that, at its regularly scheduled meeting held October 5, 2016, the Commission adopted amendments to the Texas Department of Licensing and Regulation's (Department's) Criminal Conviction Guidelines pursuant to Texas Occupations Code §53.025(a). The Criminal Conviction Guidelines are updated from the original guidelines published on December 5, 2003 (28 TexReg 11018) to include the Dietitians program.

The Criminal Conviction Guidelines (guidelines) describe the process by which the Department determines whether a criminal conviction renders an applicant an unsuitable candidate for the license, or whether a conviction warrants revocation or suspension of a license previously granted. The guidelines present the general factors that are considered in all cases and the reasons why particular crimes are considered to relate to each type of license issued by the Department.

Senate Bill 202, 84th Legislature, Regular Session (2015), transferred the Dietitians program from the Texas Department of State Health Services to the Texas Department of Licensing and Regulation and amended Texas Occupations Code, Chapter 451. The statutory changes were effective September 1, 2015; the adopted rules became effective October 1, 2016; and the Department commenced all regulatory functions for the Dietitians program on October 3, 2016.

The Criminal Conviction Guidelines for the Dietitians program will become a part of the overall guidelines that are already in place for other Department programs. The Department presented the applicable guidelines to the Advisory Board of Dietitians at its meeting on September 15, 2016, and received the Board's recommendation of approval.

The Criminal Conviction Guidelines for Dieticians program

Crimes against the person such as homicide, kidnapping and assault.

Reasons:

1. Licensees interact with adults, the elderly, the disabled and children in a healthcare provider/client role. Persons who have a history of committing such crimes would pose a danger to the clients or others.

2. This profession involves close proximity to and physical contact with clients and their care givers, family, and friends in locations such as, but not limited to, residences, private offices, schools or medical facilities.

3. This profession provides persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving prohibited sexual conduct.

Reasons:

1. Licensees interact with adults, the elderly, the disabled and children in a healthcare provider/client role. Persons who have a history of committing such crimes would pose a danger to the clients or others.

2. This profession involves close proximity to and physical contact with clients and their care givers, family, and friends in locations such as, but not limited to, residences, private offices, schools or medical facilities.

3. This profession provides persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving children, the elderly or the disabled as victims.

Reasons:

1. Licensees interact with adults, the elderly, the disabled and children in a healthcare provider/client role. Persons who have a history of committing such crimes would pose a danger to the clients or others.

2. This profession involves close proximity to and physical contact with clients and their care givers, family, and friends in locations such as, but not limited to, residences, private offices, schools or medical facilities.

3. This profession provides persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes against property such as theft or burglary.

Reasons:

1. Licensees interact with adults, the elderly, the disabled and children in a healthcare provider/client role. Persons who have a history of committing such crimes would pose a risk to the property of the clients.

2. This profession involves close proximity to and physical contact with clients and their care givers, family, and friends in locations such

as, but not limited to, residences, private offices, schools or medical facilities.

3. Licensees would have access to the property of clients and their care givers, family and friends.

4. This profession provides persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving fraud or deceptive trade practices

Reasons:

1. Licensees interact with adults, the elderly, the disabled and children in a healthcare provider/patient role. Persons who have a history of committing such crimes would pose a danger to the clients and their property.

2. This profession involves close proximity to and physical contact with clients and their care givers, family, and friends in locations such as, but not limited to, residences, private offices, schools or medical facilities.

3. Licensees would have access to the property of clients and their care givers, family and friends in locations such as but not limited to residences, private offices, schools and medical facilities.

4. Licensees are potentially involved in the billing of clients, filing of insurance claims and filing of government documents.

5. This profession provides persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving the possession, possession with intent to deliver, possession with intent to distribute, delivery, distribution or manufacture of drugs.

Reasons:

1. Licensees interact with adults, the elderly, the disabled and children in a healthcare provider/client role. Persons who have a history of committing such crimes would pose a danger to the clients or others.

2. This profession involves close proximity to and physical contact with clients and their care givers, family, and friends in locations such as, but not limited to, residences, private offices, schools or medical facilities.

3. Persons who have a history of drug possession or dealing could potentially have drugs in their systems or deliver illegal drugs which would make them a danger to their clients or others.

4. This profession provides persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving being under the influence of alcohol or drugs.

Reasons:

1. Licensees interact with adults, the elderly, the disabled and children in a healthcare provider/client role. Persons who have a history of committing such crimes would pose a danger to the clients or others.

2. This profession involves close proximity to and physical contact with clients and their care givers, family, and friends in locations such as, but not limited to, residences, private offices, schools or medical facilities.

3. Persons with this type of criminal history could potentially have alcohol or drugs in their systems which would make them a danger to their clients or others.

A copy of the complete Criminal Conviction Guidelines is posted on the Department's website and may be obtained at *www.tdlr.texas.gov.* You may also contact the Enforcement Division at (512) 539-5600 or by email at *enforcement@tdlr.texas.gov* to obtain a copy of the complete guidelines.

TRD-201605470
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: October 20, 2016

Texas Lottery Commission

Scratch Ticket Game Number 1822 "Winners Galore"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1822 is "WINNERS GALORE". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1822 shall be $20.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1822.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 06, 07, 08, 09, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 5X SYMBOL, GIFT SYMBOL, ARMORED CAR SYMBOL, VAULT SYMBOL, STAR SYMBOL, FIRECRACKER SYMBOL, BILL SYMBOL, MONEY BAG SYMBOL, CROWN SYMBOL, COIN SYMBOL, GOLD BAR SYMBOL, $5.00, $10.00, $20.00, $25.00, $50.00, $100, $250, $500, $1,000, $10,000 and $500,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1822 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON

42	FRTO
43	FRTH
5X SYMBOL	WINX5
GIFT SYMBOL	WIN$50
ARMORED CAR SYMBOL	ARMCAR
VAULT SYMBOL	VAULT
STAR SYMBOL	STAR
FIRECRACKER SYMBOL	FIRECRK
BILL SYMBOL	WIN$100
MONEY BAG SYMBOL	MONEYBAG
CROWN SYMBOL	CROWN
COIN SYMBOL	COIN
GOLD BAR SYMBOL	GOLD
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$25.00	TWFV$
$50.00	FFTY$
$100	ONHN
$250	TOFF
$500	FVHN
$1,000	ONTH
$10,000	10TH
$500,000	500TH

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack Number, the three (3) digit Scratch Ticket number. and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Pack-Scratch Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number(1822), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 1822-0000001-001.

H. Pack - A Pack of the "WINNERS GALORE" Scratch Ticket Game contains 025 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 025 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 025 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "WINNERS GALORE" Scratch Ticket Game No. 1822.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "WINNERS GALORE" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 57 (fifty-seven) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "5X" Play Symbol, the player wins 5 (five) TIMES the prize for that symbol. BONUS 1: If a player reveals a "GIFT" Play

Symbol, the player wins $50 instantly! BONUS 2: If a player reveals a "BILL" Play Symbol, the player wins $100 instantly! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 57 (fifty-seven) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number. must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number., Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly 57 (fifty-seven) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 57 (fifty-seven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 57 (fifty-seven) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Numbers must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to twenty-seven (27) times in accordance with the approved prize structure.

B. Adjacent Tickets within a Pack will not have matching Play Symbol and Prize Symbol patterns. Two (2) Tickets have matching Play Symbol and Prize Symbol patterns if they have the same Play Symbols and Prize Symbols in the same spots.

C. The top Prize Symbol will appear on every Ticket unless otherwise restricted by parameters, play action or prize structure.

D. Non-winning "YOUR NUMBERS" Play Symbols will all be different.

E. Each Ticket will have five (5) different "WINNING NUMBERS' Play Symbols.

F. Non-winning Prize Symbols will never appear more than three (3) times.

G. The "5X" (WINX5) Play Symbol will never appear in the "WINNING NUMBERS" Play Symbol spots.

H. The "5X" (WINX5) Play Symbol will only appear as dictated by the prize structure.

I. Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

J. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 20 and $20).

K. BONUS 1: The "GIFT" (WIN$50) Play Symbol will only appear as dictated by the prize structure.

L. BONUS 2: The "BILL" (WIN$100) Play Symbol will only appear as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "WINNERS GALORE" Scratch Ticket Game prize of $5.00, $10.00, $20.00, $25.00, $50.00, $100, $250 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not

required, to pay a $25.00, $50.00, $100, $250 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "WINNERS GALORE" Scratch Ticket Game prize of $1,000, $10,000 or $500,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "WINNERS GALORE" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "WINNERS GALORE" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "WINNERS GALORE" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 5,040,000 Scratch Tickets in Scratch Ticket Game No. 1822. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1822 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5	2,167,200	2.33
$10	1,512,000	3.33
$20	756,000	6.67
$25	201,600	25.00
$50	305,424	16.50
$100	84,420	59.70
$250	11,025	457.14
$500	2,142	2,352.94
$1,000	156	32,307.69
$10,000	30	168,000.00
$500,000	3	1,680,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning any prize including prizes of less than $20 are 1 in 1.00. The odds of winning a prize of $20 or more are 1 in 3.70.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1822 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1822, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-201605525
Bob Biard
General Counsel
Texas Lottery Commission
Filed: October 24, 2016

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Panhandle Regional Planning Commission

Legal Notice

The Panhandle Regional Planning Commission (PRPC) is seeking proposals from qualified organizations with demonstrated competence, knowledge, qualifications, successful performance, and reasonable fees to provide fiscal monitoring services for the workforce development programs administered in the Panhandle Workforce Development Area (PWDA). The purpose of this solicitation is to enable PRPC to evaluate and select an entity capable of performing these services and to enter into negotiation for a contract at a fair and reasonable price.

Interested proposers may obtain a copy of the solicitation packet by contacting Leslie Hardin, at (806) 372-3381/(800) 477-4562 or lhardin@theprpc.org. The proposals must be submitted to PRPC no later than November 18, 2016.

TRD-201605472
Leslie Hardin
WFD Contracts Coordinator
Panhandle Regional Planning Commission
Filed: October 20, 2016

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Office of Public Utility Counsel

Notice of Annual Public Hearing

Pursuant to the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §13.064, the Office of Public Utility Counsel (OPUC) will conduct its annual public hearing.

The public hearing will be held on the date, time and location indicated below.

Monday, December 5, 2016, from 11:00 a.m. - 1:00 p.m.

Waco Chamber of Commerce

Cooper Room

101 S. 3rd Street

Waco, Texas 76701

OPUC represents the interests of residential and small commercial consumers, as a class, in electric, telecommunications and water and waste-

water proceedings before the Public Utility Commission, Electric Reliability Council of Texas, and state and federal courts. OPUC seeks public input on its priorities for the coming year.

All interested persons are invited to attend and provide input.

For further information contact Michele Gregg, P.O. Box 12397, Austin, Texas 78711-2397 or (512) 936-7500 or 1-(877) 839-0363 or email: *customer@opuc.texas.gov.*

TRD-201605516
Tonya Baer
Public Counsel
Office of Public Utility Counsel
Filed: October 24, 2016

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Public Utility Commission of Texas

Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Commission of an application on October 20, 2016, for a service provider certificate of operating authority, pursuant to the Public Utility Regulatory Act. Applicant intends to provide resale-only telecommunication services in the exchanges of all incumbent local exchange carriers throughout the state of Texas.

Docket Title and Number: Application of Altaworx LLC for a Service Provider Certificate of Operating Authority, Docket Number 46458.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 no later than November 14, 2016. Hearing and speech impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46458.

TRD-201605493
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 21, 2016

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Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Commission of an application on October 21, 2016 for a service provider certificate of operating authority, pursuant to the Public Utility Regulatory Act. Applicant intends to provide facilities-based, data, and resale telecommunication services throughout the Lubbock and Amarillo local access and transport areas, excluding the Bean, Cleta, Elkins, Goodnight Gurley, Kress, Redmon, Silverton, Umbarger, and Vigo Park exchanges in which the applicant already possesses a certificate of convenience and necessity.

Docket Title and Number: Application of Mid-Plains Rural Telephone Cooperative, Inc. d/b/a Mid Plains Communications for a Service Provider Certificate of Operating Authority, Docket Number 46464.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 no later than November 23, 2016. Hearing and speech impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46464.

TRD-201605554
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 25, 2016

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Commission on October 18, 2016.

Docket Style and Number: Application of Altoga Water Supply Corporation and North Collin Special Utility District for Sale, Transfer, or Merger of Facilities and Certificate Rights in Collin County, Docket Number 46452.

The Application. North Collin Special Utility District seeks approval to acquire Altoga Water Supply Corporation's certificated service area under water Certificate of Convenience and Necessity No. 12580. The total area being requested includes approximately 4,160 acres and serves 338 current customers.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 46452.

TRD-201605494
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 21, 2016

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on October 21, 2016, pursuant to the Public Utility Regulatory Act, Texas Util. Code Ann. §§39.154 and 39.158.

Docket Style and Number: Application of Cotton Plains Holdings, LLC Pursuant to Section 39.158 of the Public Utility Regulatory Act, Docket Number 46461.

The Application: On October 21, 2016, Cotton Plains Holdings, LLC filed an application for approval of the issuance of passive equity interests to JPM Capital Corporation, Tyr Cotton Plains, LLC and Firstar Development, LLC (collectively, investors). The combined direct and indirect generation owned and controlled by Cotton Plains Holdings together with its affiliates and investors and their affiliates will equal approximately 1,315 MW, or approximately 1.4% of the installed capacity in ERCOT or capable of delivery into ERCOT.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to by mail at P.O. Box 13326, Austin, Texas

78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46461.

TRD-201605531
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 24, 2016

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Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 24, 2016, to amend a certificated service area for a service area exception within Montgomery, Texas.

Docket Style and Number: Application of CenterPoint Energy Houston Electric, LLC to amend a Certificate of Convenience and Necessity for a Service Area Exception in Montgomery County. Docket Number 46465.

The Application: CenterPoint Energy Houston Electric, LLC filed an application for a service area boundary exception to allow CenterPoint to provide service to a specific customer located within the certificated service area of Entergy Texas, Inc. (ETI). ETI has provided an affidavit of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than November 14, 2016, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the Commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46465.

TRD-201605555
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 25, 2016

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Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 24, 2016 for an amendment to certificated service area boundaries within Harris and Montgomery Counties, Texas.

Docket Style and Number: Application of CenterPoint Energy Houston Electric, LLC and Entergy Texas, Inc. to Amend Certificates of Convenience and Necessity for Electric Service Area Boundaries within Harris and Montgomery Counties. Docket Number 46466.

The Application: CenterPoint Energy Houston Electric, LLC and Entergy Texas, Inc. filed an application for a service area boundary exception to better define the Watermark at Tomball and Royal Brook at Kingwood developments.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than November 14, 2016 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the Commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46466.

TRD-201605556
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 25, 2016

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Notice of Application to Amend Water and Sewer Certificates of Convenience and Necessity

Notice is given to the public of the filing of an application to amend water and sewer certificates of convenience and necessity (CCN) in Hunt and Rockwall Counties.

Docket Style and Number: Application of the City of Royse City to Amend its Water and Sewer Certificates of Convenience and Necessity and Decertify a Portion of Verandah Municipal Utility District's Service Area in Hunt and Rockwall Counties, Docket Number 46451.

The Application: The City of Royse City filed an application to amend its water and sewer certificates of convenience and necessity (CCN) Nos. 12827 and 20813 and to decertify a portion of Verandah MUD's water and sewer CCNs in Hunt and Rockwall Counties. The total area being requested includes approximately 162 acres and 0 current customers.

Persons wishing to intervene or comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46451.

TRD-201605526
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 24, 2016

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Notice of Application to Amend Water Certificate of Convenience and Necessity

Notice is given to the public of the filing of an application to amend water certificate of convenience and necessity (CCN) no. 11608 in Denton County, Texas.

Docket Style and Number: Application of Terra Southwest, Inc. to Amend a Certificate of Convenience and Necessity in Denton County, Docket Number 46441.

The Application: Terra Southwest, Inc. seeks to amend its CCN to include an area to which it is currently providing service. The requested service area is currently not within the certified area of any CCN.

Persons wishing to intervene or comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46441.

TRD-201605468

Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 19, 2016

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Public Notice of Workshop

Commission staff will conduct a workshop in Project No. 42786, *Review of Advanced Metering System Web Portals,* on Monday, November 14, 2016, at 1:00 p.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The purpose of the workshop is to discuss Smart Meter Texas (SMT) performance standards that the electric utilities that participate in SMT may include in a new contract for operation of SMT upon expiration of the existing contract. An agenda for the workshop will be made available in Central Records under Project No. 42786 prior to the meeting.

Questions concerning the workshop or this notice should be referred to Therese Harris, Senior Utility Analyst, Infrastructure and Reliability Division, (512) 936-7378. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1.

TRD-201605557
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 25, 2016

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Office of the Secretary of State

Extension of Comment Periods

On August 1, 2016, the Texas Secretary of State proposed to repeal and replace 1 TAC §81.52, relating to precinct ballot counters, and proposed amendments to 1 TAC §81.60 and §81.61 relating to voting system certification exams, and to §81.62 relating specifically to real time audit log printers. The proposed changes to the rules were published in the August 12, 2016 issue of the *Texas Register* (41 TexReg 5837; 41 TexReg 5840) with a thirty (30) day comment period to follow. On August 23, 2016, the Texas Secretary of State extended the comment period for an additional sixty (60) days, until November 10, 2016, and notice was published in the September 2, 2016 issue of the *Texas Register* (41 TexReg 6829). **The comment period for all of the foregoing proposed changes has been extended for an additional sixty (60) days, and comments will be accepted through January 9, 2017.**

Comments on the proposed repeal, new rule, and/or amendments may be submitted by mail to Elections Division, Office of the Texas Secretary of State, P.O. Box 12060, Austin, Texas 78711-2060. Comments may also be sent via e-mail to: *elections@sos.texas.gov.* For comments submitted electronically, please include "Proposed Rule §81.52" and/or "Proposed Amendments of Rules §§81.60-81.62" in the subject line. Comments should be organized in a manner consistent with the organization of the proposed changes to the rules. Questions concerning the proposed changes to the rules may be directed to Elections Division, Office of the Texas Secretary of State, at (512) 463-5650. The Secretary of State encourages all interested persons to submit written comments no later than January 9, 2017.

TRD-201605602
Lindsey Wolf
General Counsel
Office of the Secretary of State
Filed: October 26, 2016

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Supreme Court of Texas

In the Supreme Court of Texas

Misc. Docket No. 16-9158

APPROVAL OF AMENDMENTS TO RULE XVIII OF THE RULES GOVERNING ADMISSION TO THE BAR OF TEXAS

ORDERED that:

1. Rule XVIII of the Rules Governing Admission to the Bar of Texas is amended as follows, effective immediately.

2. The Clerk is directed to:

a. file a copy of this order with the Secretary of State;

b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal;*

c. send a copy of this order to each elected member of the Legislature; and

d. submit a copy of the order for publication in the *Texas Register*.

Dated: October 18, 2016

_____
Nathan L. Hecht, Chief Justice

_____
Paul W. Green, Justice

_____
Phil Johnson, Justice

_____
Don R. Willett, Justice

_____
Eva M. Guzman, Justice

_____
Debra H. Lehrmann, Justice

_____
Jeffrey S. Boyd, Justice

_____
John P. Devine, Justice

_____
Jeffrey V. Brown, Justice

Rule XVIII
Fees

(a) The following provisions shall govern the fees charged by the Board:

FEES RELATING TO DECLARATIONS

Declaration Investigation Fee	$150
Fingerprint Card Processing Fee	$ 40
	$190
Late Filing Fee	$150
Fee for Check Returned for Insufficient Funds	$ 25

FEES RELATING TO ELIGIBILITY & EXAMINATIONS

Texas Law Student:

$150		Application Fee
95		Examination Fee
~~75~~	55	Investigation Fee
~~$320~~	300	

Out-of-State Law Student:

$150		Application Fee
40		Fingerprint Card Processing Fee
~~95~~	150	Examination Fee
150		Investigation Fee
~~$435~~	490	

Attorneys Licensed in another State:

$700	Application Fee
40	Fingerprint Card Processing Fee
150	Examination Fee
150	Investigation Fee
$1,040	

Attorneys Qualified for Admission Without Examination Under Rule XIII:

$700	Application Fee
40	Fingerprint Card Processing Fee
150	Investigation Fee
$890	

Foreign Nation Attorney – Texas Bar Exam Applicant only:

$700	Application Fee
40	Fingerprint Card Processing Fee

150	Examination Fee
150	Investigation Fee
100	Foreign Nation Inquiry Fee
$1,140	

Foreign Nation Attorney – Concurrent Texas Bar Exam and Foreign Legal Consultant Applications:

$700	Application Fee
150	Foreign Legal Consultation Supplemental Processing Fee
40	Fingerprint Card Processing Fee
150	Examination Fee
150	Investigation Fee
100	Foreign Nation Inquiry Fee
$1,290	

Re-application for Examination:

$150	Re-application Fee
95	Examination Fee
75	Investigation Fee on Re-Application
$320	

Foreign Legal Consultant – Application only:

$700	Application Fee
40	Fingerprint Card Processing Fee
150	Investigation Fee
100	Foreign Nation Inquiry Fee
$990	

Foreign Legal Consultant Re-Application Fee:

$150	Re-Application Fee
150	Supplemental Investigation Fee (every second renewal year only)
$300	($150 in alternate years)

Supplemental Investigation (S.I.) Fee (as required under Rule IX	$150
Fingerprint Card Processing Fee	$ 40
	$190

Military Attorney Application Fee (as required under Rule XXII)	$ 25
Military Attorney Renewal Application Fee (as required under Rule XXII)	$ 25

Miscellaneous Fees

Late Filing Fee	$150
Fee for Check Returned for Insufficient Funds	$ 25
MBE Transfer Fee	$ 25
Application Deposit Fee[1]	$ 30

[1] One deposit fee shall be credited toward the filing fee if the application is filed within one (1) year of the date the deposit is received.

Incompleteness Fee[2]	$ 75
Laptop Examination Fee	$ 50

(b) No refund or transfer of fees will be made in the event of the withdrawal of any Declaration or Application, nor in the event a determination is made by the Board that the Applicant or Declarant does not meet the requirements imposed under these Rules.

(c) Any fee required under these Rules may be waived or lowered by the Board upon written request and proof of indigence.

[2] This fee shall be imposed when a document (Declaration, Application, Supplemental investigation, etc.,) is received, for the second and subsequent times, which is determined to be incomplete (e.g., unanswered questions, not signed, not notarized, incorrect fees, etc.).

TRD-201605473
Martha Newton
Rules Attorney
Supreme Court of Texas
Filed: October 20, 2016

♦ ♦ ♦

Texas Department of Transportation

Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following website:

www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.html.

Or visit www.txdot.gov, and under How Do I, choose Find Hearings and Meetings, then choose Hearings and Meetings, and then choose Schedule.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4500 or 1-800-68-PILOT.

TRD-201605539
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: October 25, 2016

♦ ♦ ♦

Request for Proposals - Traffic Safety Program

In accordance with 43 TAC §25.901 *et seq.,* the Texas Department of Transportation (TxDOT) is requesting project proposals to support the targets and strategies of its traffic safety program to reduce the number of motor vehicle related crashes, injuries, and fatalities in Texas. These targets and strategies form the basis for the Federal Fiscal Year 2018 (FY 2018) Texas Highway Safety Plan (HSP).

Authority and responsibility for funding of the traffic safety grant program derives from the National Highway Safety Act of 1966 (23 USC §401 *et seq.),* and the Texas Traffic Safety Act of 1967 (Transportation Code, Chapter 723). The Traffic Safety Section (TRF-TS) is an integral part of TxDOT and works through 25 districts for local projects. The program is administered at the state level by TxDOT's Traffic Operations Division (TRF). The executive director of TxDOT is the designated Governor's Highway Safety Representative.

The following is information related to the FY 2018 General Traffic Safety Grants - Request for Proposals (RFP). Please review the full FY 2018 RFP located online at: *https://www.txdot.gov/apps/egrants/eGrantsHelp/RFP/RFP2018.pdf.*

This request for proposals does not include solicitations for Selective Traffic Enforcement Program (STEP) proposals as in previous years. Information regarding STEP proposals for FY 2018 can be found at: *https://www.txdot.gov/apps/egrants/eGrantsHelp/RFP.html* and STEP proposals will be submitted under a separate process for FY 2018.

General Proposals for highway safety funding are due to the TRF-TS no later than 5:00 p.m., CST, January 9, 2017.

All questions regarding the development of proposals must be submitted by sending an email to: TRF_RFP@txdot.gov by 5:00 p.m. CST, on December 2, 2016. A list of the questions with answers (Q&A document) will be posted at: *https://www.txdot.gov/apps/eGrants/eGrantsHelp/rfp.html* by 5:00 p.m. CST, on December 9, 2016.

A webinar on general proposal submissions via eGrants will be hosted by the TRF-TS Austin headquarters staff. Please contact a TRF-TS Program Manager (PM), or Traffic Safety Specialist (TSS) at (512) 416-3204 or send an email to TRF_RFP@txdot.gov to acquire access information. This webinar will be conducted on Thursday, November 10, 2016, from 9:00 a.m. CST to 12:00 p.m. CST.

The Program Needs Section of the RFP includes a Performance Measures chart which outlines the targets, strategies, and performance measures for each of the Traffic Safety Program Areas. TRF-TS is seeking proposals in all program areas, but is particularly interested in proposals which address the specific program needs listed in the High Priority Program Needs subsection of the Program Needs Section of the RFP.

The proposals must be completed using eGrants, which can be found by going to *www.txdot.gov/apps/egrants.*

TRD-201605492
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: October 21, 2016

♦ ♦ ♦

How to Use the Texas Register

Information Available: The sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 40 (2015) is cited as follows: 40 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "40 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 40 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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